



भारत का राजपत्र The Gazette of India

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No. 50] NEW DELHI, SATURDAY, DECEMBER 14, 1996/AGRAHAYANA 23, 1918

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(आर्थिक कार्य विभाग)
(बैंकिंग प्रभाग)

नई दिल्ली, 29 नवम्बर, 1996

MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)

New Delhi, the 29th November, 1996

कां०आ० 3403.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण
उपबंध) स्कीम, 1970 के खण्ड 3 और खण्ड 8 के उपखण्ड
(1) के साथ पठित बैंककारी कम्पनी (उपक्रमों का अर्जन
और अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा
3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते
हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने
के पश्चात्, एतद्वारा, श्री बी० सामूल वर्तमान महा-
प्रबन्धक, यूनियन बैंक ऑफ इंडिया को उनके कार्यभार ग्रहण
करने की तारीख से 5 वर्ष की अवधि के लिए
इलाहाबाद बैंक पूर्णकालिक निदेशक (कार्यपालक निदेशक
के रूप में पदनामित) के रूप में नियुक्त करती है।

[एफ०सं० 9/18/96—बी०ओ० I(i)]

एम० दामोदरन, संयुक्त सचिव

S.O. 3403.—In exercise of the powers conferred by clause (a) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with clause 3 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Sh. B. Samal, presently General Manager, Union Bank of India, as a whole time Director (designated as the Executive Director) of Allahabad Bank for a period of five years from the date of his taking charge.

[F. No. 9/18/96 B.O.I(i)]

M. DAMODARAN, Jt. Secy.

नई दिल्ली, 29 नवम्बर, 1996

New Delhi, the 29th November, 1996

का०आ० 3404.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 और खण्ड 8 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा श्री एक एन सिनोर, वर्तमान महाप्रबंधक, यूनियन बैंक ऑफ इंडिया को उनके कार्यभार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए सेंट्रल बैंक ऑफ इंडिया के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[एफ० सं० 9/18/96-बी०ओ० I (ii)]

एम० दामोदरन, संयुक्त सचिव

New Delhi, the 29th November, 1996

S.O. 3404.—In exercise of the powers conferred by clause (a) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with clause 3 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri H. N. Sinor, presently General Manager, Union Bank of India, as a whole time Director (designated as the Executive Director) of Central Bank of India for a period of five years from the date of his taking charge.

[F. No. 9/18/96-B.O.I(ii)]

M. DAMODARAN, Jt. Secy.

नई दिल्ली, 29 नवम्बर, 1996

का०आ० 3405.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1980 के खण्ड 3 और खण्ड 8 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा श्री बी०डी० नारंग, वर्तमान महाप्रबंधक, यूनियन बैंक ऑफ इंडिया को उनके कार्यभार ग्रहण करने की तारीख से 5 वर्ष की अवधि के लिए पंजाब एण्ड सिंध बैंक के पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[एफ० सं० 9/18/96-बी०ओ० I (iii)]

एम० दामोदरन, संयुक्त सचिव

S.O. 3405.—In exercise of the powers conferred by clause (a) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with clause 3 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri B.D. Narang, presently General Manager, Union Bank of India, as a whole time Director (designated as the Executive Director) of Punjab & Sind Bank for a period of five years from the date of his taking charge.

[F. No. 9/18/96-B.O.I(iii)]

M. DAMODARAN, Jt. Secy.

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 23 अक्टूबर, 1996

का० आ० 3406.—केन्द्रीय सरकार, राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के अन्तर्गत निम्नलिखित केन्द्रीय विद्यालयों को जिनमें 80% से अधिक कर्मचारियों में हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिमुखित करती है—

1. केन्द्रीय विद्यालय
एयर फोर्स हाई ग्राउंड,
चण्डीगढ़।
2. केन्द्रीय विद्यालय,
सेक्टर-2, आर० के० पुरम,
नई दिल्ली-22
3. केन्द्रीय विद्यालय,
सीमा सुरक्षा बल कैम्प छावना,
नई दिल्ली-11007।
4. केन्द्रीय विद्यालय, राष्ट्रीय सुरक्षा गार्ड,
मानेसर, गुडगावा
(हरियाणा)

[सं० 11011-7/95-रा०भा०ग०]

निकेतु ओझा, निदेशक (रा०भा०)

MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Education)
New Delhi, the 23rd October, 1996

S.O. —In pursuance of sub-rule (4) of Rule 10 of the Official Languages (use for Official Purposes of the Union) Rules, 1976, The Central Government hereby notifies of the following Kendriya Vidyalayas under the Ministry of Human Resource Development (Department of Education) more than 80 per cent staff of which has working knowledge of Hindi :—

1. Kendriya Vidyalaya,
Air Force High Ground,
Chandigarh.

2. Kendriya Vidyalaya,
Sector-2, R. K. Puram,
New Delhi-110022.

3. Kendriya Vidyalaya,
Boarder Security Force Camp, Chhawla,
New Delhi-110071.

4. Kendriya Vidyalaya,
National Security Guard,
Manesara, Gurgaon,
(Haryana).

[No. 11011-7/95-O.L.U.]

NISHENDU OJHA, Director (O.L.)

कोयला मंत्रालय

नई दिल्ली, 2 दिसम्बर, 1996

का० आ० 3407.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. का०आ० 2905, तारीख 18 अक्टूबर, 1995 जो भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) तारीख 4 नवम्बर, 1995 में प्रकाशित की गई थी,

उक्त अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट पारिस्थलिक भूमि और अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है,

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और महाराष्ट्र सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 69.53 हेक्टेयर (लगभग) या 171.82 एकड़ (लगभग) माप वाली भूमि अर्जित की जानी चाहिए।

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 69.53 हेक्टेयर (लगभग) या 171.82 एकड़ (लगभग) माप वाली भूमि अर्जित की जाती है।

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक सं० सी-1(ई) 111/जे० आर/596-1095 तारीख 25 अक्टूबर, 1995 का निरीक्षण कलैक्टर के कार्यालय, चन्द्रपुर (महाराष्ट्र) या कोयला नियंत्रक, 1, कार्जोसल हाउस स्ट्रीट, फलकता के कार्यालय में या वेस्टर्न कोलफील्ड्स लि० (राजस्थान अनुभाग) कोयला इस्टेट सिविल लाईंस, नागपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची

न्यू हिन्दुस्तान लालपेठ विस्तारण खंड (फेज-1)

चन्द्रपुर क्षेत्र

जिला—चन्द्रपुर (महाराष्ट्र)

रेखांक सं० सी-1 (ई) 111/जे०आर०/596-1095 तारीख 25 अक्टूबर, 1995 सभी अधिकार

क्र०सं०	ग्राम का नाम	पटवारी सकिल सं०	तहसील	जिला	हेक्टेयरों में क्षेत्र	टिप्पणियाँ
1	2	3	4	5	6	7
1.	माना	9	चन्द्रपुर	चन्द्रपुर	57.63	भाग
2.	आरवट	9	चन्द्रपुर	चन्द्रपुर	9.00	भाग
3.	चारवट	9	चन्द्रपुर	चन्द्रपुर	2.90	भाग

कुल क्षेत्र 69.53 हेक्टेयर (लगभग)

या

171.82 एकड़ (लगभग)

ग्राम माना में अजित किये जाने वाले प्लॉट संख्यांक

6, 7/1, 7/2, 8/1, 8/2, 8/3, 8/4, 8/5, 9/1, 9/2ए, 9/2बी, 9/3, 9/4, 9/5, 9/6, 9/7, 9/8, 9/9, 10, 11/2, 11/3, 12/1, 12/2, 12/3, 12/4, 13/1, 13/2, 13/3, 13/4, 13/5, 14, 15, 16, 17, 18/1, 18/3, 18/4, 18/5, 23/1ए, 23/1बी, 23/2, सड़क (भाग), नदी (भाग)

ग्राम आखट में अजित किये जाने वाले प्लॉट संख्यांक

नदी (भाग)

ग्राम आखट में अजित किये जाने वाले प्लॉट संख्यांक

नदी (भाग)

सीमा वर्णन

क-ख : रेखा बिन्दु "क" से आरम्भ होती है और ग्राम आखट से होकर जाती है इराई नदी पार करती है और ग्राम माना में होकर आगे बढ़ती है तथा "बिन्दु 'ख'" पर मिलती है।

ख-ग : रेखा इराई नदी के पूर्वी किनारे के साथ-साथ ग्राम माना में होकर जाती है, फिर प्लॉट सं० 18/1, 18/4, 18/3, 18/5, 17, 16, 15, 13/4, 23/2, 23/1क, 23/1ख, 6 की बाहरी सीमा के साथ-साथ ग्राम माना में होकर आगे बढ़ती है, सड़क पार करती है और सड़क की बाहरी सीमा के साथ-साथ जाती है तथा बिन्दु "ग" पर मिलती है।

ग-घ : रेखा ग्राम माना से होकर जाती है, सड़क पार करती है और प्लॉट संख्यांक 6, 7/1, 7/2, 8/4, 8/1, 8/2, की बाहरी सीमा के साथ-साथ आगे बढ़ती है तथा बिन्दु "घ" पर मिलती है।

घ-ङ : रेखा ग्राम माना से होकर जाती है, इराई नदी पार करती है और ग्राम आखट से होकर आगे बढ़ती है तथा बिन्दु "ङ" पर मिलती है।

ङ-क : रेखा इराई नदी के पश्चिमी किनारे के साथ-साथ ग्राम आखट से होकर जाती है फिर ग्राम आखट से होकर आगे बढ़ती है और इराई नदी के पश्चिम किनारे के साथ-साथ जाती है और प्रारम्भिक बिन्दु "क" पर मिलती है।

[फा०सं० 43015/25/94/ एल०एस० डब्ल्यू०]

श्रीमति पी० एल० सैनी, अवर सचिव

MINISTRY OF COAL

New Delhi, 2nd December, 1996

S.O.3407.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 2005 dated the 18th October, 1995, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated the 4th November, 1995, the Central Government gave notice of its intention to acquire lands and rights in the locality specified in the Schedule appended to that notification;

And whereas the competent authority in pursuance of section 8 of the said Act has made his report to the Central Government;

And whereas the Central Government after considering the report aforesaid and after consulting the Government of Maharashtra is satisfied that the lands measuring 69.53 hectares (approximately) or 171.82 acres (approximately) described in the Schedule appended hereto should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the lands measuring 69.53 hectares (approximately) or 171.82 acres (approximately) described in the Schedule hereto annexed are hereby acquired.

The plan bearing No. C-I(E)II/JR/596—1095 dated the 25th October, 1995 of the area covered by this notification may be inspected in the office of the Collector, Chandrapur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Calcutta or in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur (Maharashtra).

SCHEDULE

New Hindustan Lalpeth Openast Extension Block (Phase-I)

Chandrapur Area

District Chandrapur (Maharashtra)

(Plan No. C-1(E)III/JR/596—1095 dated the 25th October, 1995)

All Rights

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Mana	9	Chandrapur	Chandrapur	57.63	Part
2.	Arwat	9	Chandrapur	Chandrapur	9.00	Part
3.	Charwat	0	Chandrapur	Chandrapur	2.90	Part
Total area :					69.53 hectares (approximately)	or 171.82 acres (approximately)

Plot numbers acquired in village Mana :

6, 7/1, 7/2, 8/1, 8/2, 8/3, 8/4, 8/5, 9/1, 9/2A, 9/2B, 9/3, 9/4, 9/5, 9/6, 9/7, 9/8, 9/9, 10, 11/1, 11/2, 11/3, 12/1, 12/2, 12/3, 12/4, 13/1, 13/2, 13/3, 13/4, 13/5, 14, 15, 16, 17, 18/1, 18/3, 18/4, 18/5, 23/1A, 23/1B, 23/2, Road (Part), River (Part).

Plot numbers acquired in village Arwat :

River (Part).

Plot numbers acquired in village Charwat.

River (Part).

Boundary description :

A—B Line starts from point 'A' and passes through village Arwat, crosses Erai River and proceeds through village Mana and meets at point 'B'.

B—C Line passes through village Mana along the eastern bank of Erai River, then proceeds through village Mana along the outer boundary of plot numbers 18/1, 18/4, 18/3, 18/5, 17/16, 15, 13/4, 23/2, 23/1A, 23/1B, 6, crosses road and passes along the outer boundary of road and meets at point 'C'.

C—D Line passes through village Mana crosses road and proceeds along the outer boundary of plot numbers 6, 7/1, 7/2, 8/4, 8/1, 8/2 and meets at point 'D'.

D—E Line passes through village Mana, crosses Erai River and proceeds through village Charwat and meets at point 'E'.

E—A Line passes through village Charwat along the western bank of Erai River, then proceeds through village Arwat and passes along the western bank of Erai River and meets at starting point 'A'.

[No. 43015/25/94-LSW]

Mrs. P. L. SAINI, Under Secy.

नई दिल्ली, 2 दिसम्बर, 1996

का०आ० 3408—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 7 की उपधारा (i) के अधीन भारत के राजपत्र, असाधारण, भाग 2, खंड 3, उपखंड (ii), तारीख 20 अक्टूबर, 1995 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना सं० का०आ० 853 (अ), तारीख 20 अक्टूबर, 1995 द्वारा उस अधिसूचना से उपाखण्ड अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में, जिसका माप 542.557 हेक्टेयर (लगभग) या 1340.713 एकड़ (लगभग) है, खनिजों के खनन, बोर करने, उनकी खुदाई और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने तथा उन्हें ले जाने के अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है,

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और मध्य प्रदेश सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 542.557 हेक्टेयर (लगभग) या 1340.713 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, बोर करने, उनकी खुदाई करने, तलाश करने, उन्हें प्राप्त करने उन पर कार्य करने और ले जाने के अधिकार अर्जित किए जाने चाहिए।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 542.557 हेक्टेयर (लगभग) या 1340.713 एकड़ (लगभग) माप वाली भूमि खनिजों के खनन, बोर करने, उनकी खुदाई करने और तलाश करने, उन्हें प्राप्त करने उन पर कार्य करने और ले जाने के अधिकारों के अर्जन की घोषणा करती है।

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक सं० सी-1(ई)/III/एच०आर०/601-496, तारीख 15 अप्रैल, 1996 का निरीक्षण कलक्टर, छिदवाड़ा (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1 कांङसिल हाऊस स्ट्रीट, कलकत्ता-700001 के कार्यालय में या वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल इस्टेट, सिविल लाइन्स, नागपुर-440001 (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची

टांडसी ब्लॉक

कमहान क्षेत्र

जिला छिदवाड़ा (मध्य प्रदेश)

(रेखांक सं० सी-1(ई)/III/एच०आर०/601-496, तारीख, 15 अप्रैल, 1996)

खनन अधिकार

क्र०सं०	नाम	पटवारी	कम्पार्टमेंट	तहसील	जिला	क्षेत्र	टिपणियां
	ग्राम	बन	संख्यांक	संख्यांक		हेक्टेयर में	
1. करंजपानी	बुधी	312 (नया)	—	जुन्नारदेव	छिदवाड़ा	61.668	भाग
2.	संरक्षित बन	—	पी-410/ पी-400	जुन्नारदेव (नया)	छिदवाड़ा	72.150	भाग
3.	संरक्षित बन	—	पी-421 (पी-411)	जुन्नारदेव (नया)	छिदवाड़ा	75.091	भाग
4.	संरक्षित बन	—	पी-422/ पी-412	जुन्नारदेव (नया)	छिदवाड़ा	46.944	भाग
5.	संरक्षित बन	—	पी-423/ पी-413	जुन्नारदेव (नया)	छिदवाड़ा	254.147	भाग
6.	संरक्षित बन	—	पी-434/ पी-424	जुन्नारदेव (नया)	छिदवाड़ा	82.557	भाग
कुल क्षेत्र						542.557 हेक्टेयर (लगभग) या 1340.713 एकड़ (लगभग)	

ग्राम करंजपानी बुधी में अर्जित किए गए प्लॉट संख्यांक : 125 से 178

अंशित किये गए संरक्षित जल की कम्पार्टमेंट संख्यांक :

पी-410, पी-400 (नया) भाग, पी-421/पी-411 (नया) भाग, पी-422/पी-412 (नया) भाग, पी-423/पी-413 (नया) भाग, पी-434/पी-424 (नया) भाग।

सीमा वर्णन:

- क—ख रेखा बिन्दु "क" से प्रारंभ होती है और वन कम्पार्टमेंट संख्यांक पी-421/पी-411 (नया) और पी-410/पी-400 (नया) से होकर जाती है और बिन्दु "ख" पर मिलती है।
- ख—ग रेखा वन कम्पार्टमेंट संख्यांक पी-410/पी-400 (नया) से होकर जाती है और बिन्दु "ग" पर मिलती है।
- ग—घ रेखा ग्राम करंजपानी घुषी की पूर्वी सीमा के साथ-साथ जाती है और बिन्दु "घ" पर मिलती है।
- घ—ङ रेखा वन कम्पार्टमेंट संख्यांक पी-423/पी-413 (नया) से होकर जाती है और बिन्दु "ङ" पर मिलती है।
- ङ—च रेखा वन कम्पार्टमेंट संख्यांक पी-423/पी-413 (नया) से होकर जाती है फिर करंजपानी घुषी और ननकहर्क ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ आगे बढ़ती है तथा बिन्दु "च" पर मिलती है।
- च—छ रेखा वन कम्पार्टमेंट संख्यांक पी-423/पी-413 (नया) के साथ-साथ जाती है और बिन्दु "छ" पर मिलती है।
- छ—ज रेखा वन कम्पार्टमेंट संख्यांक पी-423/पी-413 (नया) से होकर जाती है और बिन्दु "ज" पर मिलती है।
- ज—झ रेखा वन कम्पार्टमेंट संख्यांक पी-423/पी-413 (नया) और पी-434/पी-424 (नया) से होकर जाती है तथा बिन्दु "झ" पर मिलती है।
- झ—क रेखा वन कम्पार्टमेंट संख्यांक पी-434/पी-424 (नया), पी-422/पी-412 (नया) और पी-421/पी-411 से होकर जाती है तथा प्रारंभिक बिन्दु "क" पर मिलती है।

[फा० सं० 43015/7/92-एन० एस० डब्ल्यू.]

श्रीमती पी० एन० सेनी, सचिव

New Delhi, the 2nd December, 1996

S.O. 3408.—Whereas by the notification of the Government of India in the Ministry of Coal, No. S.O.853 (E) dated the 20th October, 1995, published in the extraordinary Gazette of India, Part-II, Section-3, Sub-Section (ii) dated the 20th October, 1995, under sub-section (1) of Section-7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to acquire the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 542.557 hectares (approximately) in or 1340.713 acres (approximately) the Mining Rights in the locality specified in the schedule annexed to that notification;

And whereas the competent authority in pursuance of section 8 of the said Act has made his report to the Central Government;

And whereas the Central Government, after considering the report aforesaid and after consulting the Government of Madhya Pradesh, is satisfied that the mining rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 542.557 hectares (approximately) or 1340.713 acres (approximately) described in the Schedule appended hereto should be acquired.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 9 of the said Act, the Central Government hereby declares that the mining rights to mine, quarry, bore, dig and search for, win, work and carry away minerals in the lands measuring 542.557 hectares (approximately) or 1340.713 acres (approximately) described in the Schedule appended hereto are hereby acquired.

The Plan bearing number C-1(E)/III/HR/601—496 dated the 15th April, 1996, of the area covered by this notification may be inspected in the Office of the Collector, Chhindwara (Madhya Pradesh) or in the office of the Coal Controller, 1, Council House Street, Calcutta—700 001 or in the Office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur—440 001 (Maharashtra).

SCHEDULE
TANDSI BLOCK
KANHAN AREA
DISTRICT CHHINDWARA (MADHYA PRADESH)
(Plan No. C-1(E)/III/HR/601—496 dated the 15th April, 1996)

Mining Rights :

Sl. No.	Name of the Village	Forest	Patwari circle number	Compartment number	Tahsil	District	Area in hectares	Remarks
1.	Karnjpani Dhundhi	—	3/2 (New)	—	Junnardeo	Chhindwara	61.668	Part
2.		Protected Forest	—	P-410/ P-400 (New)	Junnardeo	Chhindwara	72.150	Part
3.		Protected Forest	—	P-421/ P-411 (New)	Junnardeo	Chhindwara	25.091	Part
4.		Protected Forest	—	P-422/ P-412 (New)	Junnardeo	Chhindwara	46.944	Part
5.		Protected Forest		P-423/ P-413 (New)	Junnardeo	Chhindwara	254.147	Part
6.		Protected Forest		P-434/ P-424 (New)	Junnardeo	Chhindwara	82.557	Part

Total Area :

542.557
hectares
(approximately)
or
1340.713 acres
(approximately)

Plot numbers acquired in village Karnjpani Dhundhi : 125 to 178.

Compartment numbers of Protected Forest acquired :

P-410/P-400 (New) Part, P-421/P-411 (New) Part, P-422/P-412 (New) Part, P-423/P-413 (New) Part, P-434/P-424 (New) Part.

Boundary description :

- A—B Line starts from point 'A' and passes through forest compartment numbers P-421/P-411 (New) and P-410/P-400 (New) and meets at point 'B'.
- B—C Line passes through forest compartment numbers P-410/P-400 (New) and meets at Point 'C'.
- C—D Line passes along the eastern boundary of village Karnjpani Dhundhi and meets at Point 'D'.
- D—E Line passes along the forest compartment number P-423/P-413 (New), and meets at Point 'E'.
- E—F Line passes through forest compartment number P-423/P-413 (New), then proceeds along the common village boundary of villages Karnjpani Dhundhi and Nankhark and meets at point 'F'.
- F—G Line passes along the forest compartment number P-423/P-413 (New) and meets at Point 'G'.
- G—H Line passes through forest compartment number P-423/P-413 (New) and meets at Point 'H'.
- H—I Line passes through forest compartment number P-423/P-413 (New) and P-434/P-424 (New) and meets at point 'I'.
- I—A Line passes through forest compartment number P-434/P-424 (New), P-422/P-412 (New) and P-421/P-411 (New) and meets at starting Point 'A'.

[No. 43015/7/92-LSW]

Mrs. P. L. SAINI, Under Secy.

गई दिल्ली, 3 दिसम्बर, 1996

कां.आ. 3409.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) के अधीन भारत के राजपत्र, भाग 2, खंड (3), उपखंड(ii), तारीख 2 अप्रैल, 1994 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. कां.आ. 820, तारीख 25 फरवरी, 1994 द्वारा उस अधिसूचना से उपावद अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 216.30 हेक्टेयर (लगभग) या 534.48 एकड़ (लगभग) है, कोयले का पृथक्करण करने के अपने आशय की सूचना दी थी,

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 7 की उपधारा (1) के अधीन और भारत के राजपत्र, भाग 2, खंड (3) उपखंड (ii), तारीख 2 मार्च, 1996 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. कां.आ. 576, तारीख 15 फरवरी, 1996 द्वारा 2 अप्रैल, 1996 से प्रारम्भ होने वाली और एक वर्ष की अवधि को उस अवधि के रूप में विनिर्दिष्ट करती है जिसके भीतर केन्द्रीय सरकार इससे संलग्न अनुसूची में उक्त भूमि या ऐसी भूमि में या उन पर के अधिकारों का अर्जन करने के अपने आशय की सूचना दे सकेगी।

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि के भाग में कोयला अभिप्राप्त है,

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में यथार्थित 210.54 हेक्टेयर (लगभग) या 520.27 एकड़ (लगभग) माप की भूमि और ऐसी भूमि में या उन पर के अधिकारों का अर्जन करने के अपने आशय की सूचना देती है।

टिप्पणी 1: इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक सं. सी-1(ई)/III/605-0696, तारीख 11 जून, 1996 का निरीक्षण कलक्टर, चन्द्रपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, कार्मिल हाउस स्ट्रीट, कलकत्ता के कार्यालय में या ईस्टर्न कोलफील्ड्स लि. (राजस्व अनुभाग) कोल इस्टेट, सिविल लाइन्स, नागपुर-440001 में किया जा सकता है।

टिप्पणी 2: कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध है :—

8. अर्जन की बाबत आपत्तियां :—(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण :—इस धारा के अर्थात्तरगत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संश्रियाएं करनी चाहता है और ऐसी संश्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी आपत्तिकर्ता को स्वयं मुने जाने का या विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच, यदि कोई हो, करने के पश्चात् जो वह आवश्यक समझता है वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के सम्बन्ध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के सम्बन्ध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्टें केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जन कर दिए जाते हैं।

टिप्पणी 3: केन्द्रीय सरकार ने कोयला नियंत्रक, 1, कार्मिल हाउस स्ट्रीट, कलकत्ता 700001 को उक्त अधिनियम की धारा 3 के अधीन सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

नवीन कुनाडा ब्लाक

माजरी क्षेत्र

जिला—चन्द्रपुर (महाराष्ट्र)

रेखांक सं० सी-1(ई)/III/जे०जे०एम०आर०/605-0696, तारीख 11 जून, 1996

सभी अधिकार

क्रम सं०	ग्राम का नाम	पटवारी सर्किल सं०	तहसील	जिला	क्षेत्र हैक्टेयर में	टिप्पणियाँ
1.	देउलवाडा	4	भद्रावती	चन्द्रपुर	97.33	भाग
2.	चारगांव	28	भद्रावती	चन्द्रपुर	34.78	भाग
3.	कुनाडा	28	भद्रावती	चन्द्रपुर	78.43	भाग
कुल क्षेत्र :					210.54 हैक्टेयर (लगभग)	या
					520.27 एकड़ (लगभग)	

ग्राम देउलवाडा में अर्जित किए जाने वाले प्लॉट संख्यांक :

25 से 31, 32/1-32/2क-32/2ख, 34 से 37, 38/1-38/2-38/3, 39 भाग 40 से 43, 44/1-44/2, 45, 47 भाग, 48, 395 से 398, 416, 417/1-417/2-417/3-417/4-417/5-417/6-417/7, 418 419/1-419/2-419/3-419/4-419/5-419/6, 420 से 424, 426 से 428, 429/1-429/2, 430/1-430/2, 431 से 436, 437/1-437/2, 438, 439, सड़क भाग ।

ग्राम चारगांव में अर्जित किए जाने वाले प्लॉट संख्यांक :

82/1, 82/2-82/3-82/4 भाग, 83/1-83/2, 86 से 89, 90/1, 90/2, 91 से 95, 98 भाग, 113 से 115, 116/1-116/2, 117, 118 ।

ग्राम कुनाडा में अर्जित किए जाने वाले प्लॉट संख्यांक :

152/1-152/2, 154/1-154/2, 155/1-155/2, 156 से 159, 160/1-160/2, 161, 162/1-162/2-162/3, 163, 164/1-164/2, 165/1-165/2-165/3, 166, 168/1-168/2-168/3, 169/1-169/2, 170, 171, 172/1-172/2-172/3, 173/1-173/2, 174, 175/1-175/2, 176/1-176/2, 177/1-177/2-177/3, 178/1-178/2-178/3, 179/1-179/2, 180, 181, 194/1-194/2 भाग, 195/1-195/2, 196 से 198, 199/1-199/2-199/3, 200/1-200/2-200/3, 201/1-201/2-201/3, 256/1-256/2, सड़क भाग ।

सीमा वर्णन :

क-ख : रेखा बिन्दु "क" से आरंभ होती है और कुनाडा और चारगांव ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ जाती है, फिर प्लॉट संख्यांक 152/1-152/2, 155/1-155/2 की बाहरी सीमा के साथ-साथ ग्राम कुनाडा से होकर आगे बढ़ती है, फिर प्लॉट संख्यांक 166, 165/1-165/2-165/3, 168/1-168/2-168/3, 181, 180 की बाहरी सीमा के साथ साथ जाती है, फिर प्लॉट संख्यांक 194/1-194/2 में जाती है और प्लॉट संख्यांक 256/1-256/2 की बाहरी सीमा के साथ-साथ जाती है तथा बिन्दु "ख" पर मिलती है ।

ख-ग : रेखा प्लॉट संख्यांक 256/1-256/2, 200/1-200/2-200/3, 201/1-201/2-201/3 की बाहरी सीमा के साथ साथ ग्राम कुनाडा से होकर जाती है, फिर प्लॉट संख्यांक 47 में ग्राम देउलवाडा से होकर आगे बढ़ती है, तब प्लॉट संख्यांक 48, प्लॉट सं० 39 की बाहरी सीमा के साथ-साथ जाती है, फिर प्लॉट संख्यांक 36, 35, 34 की बाहरी सीमा के साथ-साथ जाती है और बिन्दु "ग" पर मिलती है ।

ग-घ : रेखा प्लॉट सं० 34, 32/1-32/2क-32/2ख, 25, 26 की बाहरी सीमा के साथ-साथ ग्राम देउलवाडा से होकर जाती है, मथक पार करती है, फिर प्लॉट सं० 439, 438, 428, 427, 426, 424 की बाहरी सीमा के साथ-साथ जाती

- है और सड़क पार करती है तथा सड़क की बाहरी सीमा, प्लॉट सं० ३९५, ३९७, ३९८, ३९६ सड़क प्लॉट सं० ४१६ के साथ-साथ आगे बढ़ती है और बिन्दु "घ" पर मिलती है।
- घ-ङ : रेखा कुनाडा और देउलवाडा, चारगांव और देउलवाडा ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ जाती है तथा बिन्दु "ङ" पर मिलती है।
- ङ-च : रेखा प्लॉट सं० ११८, ११५, ११३, ११४, ९८ की बाहरी सीमा के साथ-साथ ग्राम चारगांव से होकर जाती है और बिन्दु "च" पर मिलती है।
- च-क : रेखा प्लॉट सं० ९८ से ग्राम चारगांव से होकर जाती है, फिर प्लॉट सं० ८२/२-८२/३-८२/४ में, प्लॉट सं० ९५ की बाहरी सीमा के साथ-साथ आगे बढ़ती है, तब प्लॉट सं० ८२/२-८२/३-८२/४, ८२/१, ८३/१-८३/२- ८७, ८६ की बाहरी सीमा के साथ-साथ आगे बढ़ती है, फिर कुनाडा और चारगांव ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ आगे बढ़ती है तथा आरंभिक बिन्दु "क" पर मिलती है।

[सं० ४३०१५/२/९३-एल.एस.उ.व्यू]

श्रीमती पी०एल० सैनी, ग्राम सचिव

New Delhi, the 3rd December, 1996

S.O. 3409.— Whereas by the notification of the Government of India in the Ministry of Coal No. S.O. 820 dated the 25th February, 1994 published in the Gazette of India, Part-II, Section-3, Sub-Section (ii) dated the 2nd April, 1994 under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to prospect for coal in 216.30 hectares (approximately) or 534.48 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification;

And whereas by the notification of the Government of India in the Ministry of Coal No. S.O.576 dated the 15th February, 1996 under sub-section (1) of section 7 of the said Act, and published in the Gazette of India in Part-II, Section 3, Sub-Section (ii) dated the 2nd March, 1996, the Central Government specified a further period of one year commencing from the 2nd April, 1996 as the period within which the Central Government may give notice of its intention to acquire the said lands or any rights in or over such lands;

And whereas the Central Government is satisfied that coal is obtainable in a part of the said lands;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the lands measuring 210.54 hectares (approximately) or 520.27 acres (approximately) and all rights in or over such lands as described in the Schedule appended hereto.

NOTE :1. The plan bearing No. C-I(E)/III/JJMR/605—0696 dated the 11th June, 1996 of the area covered by this notification may be inspected in the Office of the Collector, Chandrapur (Maharashtra) or in the Office of the Coal Controller, 1, Council House Street, Calcutta (PIN—700 001) or in the Office of the Western Coalfields Limited (Revenue Section), Coal Estate, Civil Lines, Nagpur—440 001 (Maharashtra).

NOTE 2. Attention is hereby invited to the provisions of Section 8 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) which provides as follows :—

“8. Objections to Acquisition :

- (1) Any person interested in any land in respect of which a notification under Section 7 has been issued may within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.

Explanation :—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

- (2) Every objection under sub-section (1) shall be made to the competent authority in writing and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections together with the record of the proceedings held by him, for the decision of that Government

- (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act."

Note 3. The Coal Controller, 1, Council House Street, Calcutta has been appointed by the Central Government as the Competent authority under the Act.

THE SCHEDULE
NAVIN KUNADA BLOCK
MAJRI AREA
DISTRICT CHANDRAPUR (MAHARASHTRA)

Plan No. C-I(E)/III/JJMR/605—0696 dated the 11th June, 1996.

All Rights :

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Deulwada	4	Bhadrawati	Chandrapur	97.33	Part
2.	Chargaon	28	Bhadrawati	Chandrapur	34.78	Part
3.	Kunada	28	Bhadrawati	Chandrapur	78.43	Part
Total area :					210.54 hectares (approximately)	
					or	
					520.27 acres (approximately)	

Plot Numbers to be acquired in village Deulwada :—

25 to 31, 32/1—32/2A—32/2B, 34 to 37, 38/1—38/2—38/3, 39 Part, 40 to 43, 44/1—44/2, 45, 46, 47 Part, 48, 395 to 398, 416, 417/1—417/2—417/3—417/4—417/5—417/6—417/7, 418, 419/1—419/2—419/3—419/4—419/5—419/6, 420 to 424, 426 to 428, 429/1—429/2, 430/1—430/2, 431 to 436, 437/1—437/2, 438, 439, Road part.

Plot numbers to be acquired in village Chargaon :—

82/1, 82/2—82/3—82/4 Part, 83/1—83/2, 86 to 89, 90/1, 90/2, 91 to 95, 98 Part, 113 to 115, 116/1—116/2, 117, 118.

Plot numbers to be acquired in village Kunada :—

152/1—152/2, 154/1—154/2, 155/1—155/2, 156 to 159, 160/1—160/2, 161, 162/1—162/2, 163, 164/1—164/2, 165/1—165/2—165/3, 166, 168/1—168/2—168/3, 169/1—169/2, 170, 171, 172/1—172/2—172/3, 173/1—173/2, 174, 175/1—175/2, 176/1—176/2, 177/1—177/2—177/3, 178/1—178/2—178/3, 179/1—179/2, 180, 181, 194/1—194/2 Part, 195/1—195/2, 196 to 198, 199/1—199/2—199/3, 200/1—200/2—200/3, 201/1—201/2—201/3, 256/1—256/2, Road part.

Boundary description :

- A—B** Line starts from point 'A' and passes along the common village boundary of villages Kunada and Chargaon, then proceeds through village Kunada along the outer boundary of plot numbers 152/1—152/2, 155/1—155/2, 154/1—154/2, crosses road, then passes along the outer boundary of plot numbers 166, 165/1—165/2—165/3, 168/1—168/2—168/3, 181, 180, crosses road, then passes in plot number 194/1—194/2 and passes along the outer boundary of plot number 256/1—256/2 and meets at point 'B'.
- B—C** Line passes through village Kunada along the outer boundary of plot numbers 256/1—256/2, 200/1—200/2—200/3, 201/1—201/2—201/3, then proceeds through village Deulwada in plot number 47 then passes along the outer boundary of plot number 48, in plot number 39, then passes along the outer boundary of plot numbers 46, 35, 34 and meets at point 'C'.

- C—D Line passes through village Deulwada along the outer boundary of plot numbers 34, 32/1=L32/2A=32/2B, 25, 26 crosses road, then passes along the outer boundary of plot numbers 439, 433, 428, 427, 426, 424, crosses road and proceeds along the outer boundary of road, plot numbers 395, 397, 398, 397, 396, road, plot number 416 and meets at point 'D'.
- D—E Line passes along the common village boundary of villages Kunada and Deulwada, Chargaon and Deulwada and meets at point 'E'.
- E—F Line passes through village Chargaon along the outer boundary of plot numbers 118, 115, 113, 114 98 and meets at point 'F'.
- F—A Line passes through village Chargaon in plot number 98, then proceeds along the outer boundary of plot number 95, in plot number 82/2-82/3-82/4 then proceeds along the outer boundary of plot numbers 82/2-82/3-82/4, 81/1, 83/1-83/2, 87, 86, then proceeds along the common village boundary of villages Kunada and Chargaon and meets at starting point 'A'.

[No. 43015/2/93-LSW]

Mrs. P. L. SAINI, Under Secy.

नई दिल्ली, 3 दिसम्बर, 1996

कां०आ०3410 :—केन्द्रीय सरकार को यह प्रतीत होता है कि इसमें उपावद्ध अनुसूची में उल्लिखित भूमि में कोयला अभि-प्राप्त किए जाने की संभावना है,

अतः अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उसमें कोयले का पूर्वोक्षण करने के अपने आशय की सूचना देती है,

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं०सी/(ई)/III/जी०आर/603-596 तारीख 22 मई, 1996 कानिरी-क्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग) कोयला इस्टेट, सिविल लाइन्स नागपुर-440001 (महाराष्ट्र) के कार्यालय में या कलक्टर, छिंदवाड़ा (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट कलकत्ता के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितवद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निविष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख के नब्बे दिन के भीतर भार साधक अधिकारी/विभागाध्यक्ष (राजस्व), वेस्टर्न कोलफील्ड्स लिमिटेड कोयला स्टेट, सिविल लाइन्स नागपुर-440001 को भेजेंगे।

अनुसूची "क 1"

महाबेधपुरी विस्तार खंड

पंच क्षेत्र

जिला—छिंदवाड़ा (मध्य प्रदेश)

रेखांक सं० सी-1(ई)III/जी०आर०/603-596 तारीख 22 मई, 1996

क्रम संख्यांक	ग्राम का नाम	पटवारी सकिल सं०	तहसील	जिला	हैक्टेयर में क्षेत्र	टिप्पणियां
1.	बुढारिया	7	परासिया	छिंदवाड़ा	18.650	भाग
कुल क्षेत्र :					18.650 हैक्टेयर (लगभग) या 46.08 एकड़ (लगभग)	

सीमा वर्णन :

- क-ख रेखा "क" बिन्दु से आरंभ होती है और ग्राम बुढारिया से होकर जाती है और "ख" बिन्दु पर मिलती है ।
- ख-ग : रेखा, ग्राम बुढारिया और सरकारी वन खंड सं० 65 की सम्मिलित सीमा के साथ-साथ जाती है और "ग" बिन्दु पर मिलती है ।
- ग-क : रेखा, ग्राम बुढारिया से होकर जाती है और आरंभिक बिन्दु "क" पर मिलती है ।

अनुसूची—“क 2”

क्रम संख्या	ग्राम का नाम	पटवारी सफिल सं०	तहसील	जिला	हेक्टेयर में क्षेत्र	टिप्पणियां
1.	भंडारिया	7	परासिया	छिदवाड़ा	64.750	भाग
कुल क्षेत्र :					64.750 हेक्टेयर (लगभग) या 159.99 एकड़ (लगभग)	

सीमा वर्णन

- घ-ङ : रेखा, ग्राम भंडारिया से होकर जाती है और "ङ" बिन्दु पर मिलती है ।
- ङ-च : रेखा, ग्राम भंडारिया और सरकारी वन खंड सं० 65 की सम्मिलित सीमा के साथ-साथ जाती है और "च" बिन्दु पर मिलती है ।
- च-छ : रेखा, ग्राम भंडारिया से होकर जाती है और "छ" बिन्दु पर मिलती है ।
- छ-ज-घ : रेखा, ग्राम भंडारिया और सरकारी वन खंड 65, ग्राम भंडारिया और ग्राम बुढारिया की सम्मिलित सीमा के साथ-साथ जाती है और आरंभिक बिन्दु "घ" पर मिलती है ।

अनुसूची—“क 3”

क्रम सं०	ग्राम का नाम	पटवारी सफिल सं०	तहसील	जिला	हेक्टेयर में क्षेत्र	टिप्पणियां
1.	डोंगर परासिया	14	परासिया	छिदवाड़ा	16.200	भाग
2.	खमरा जेथू	15	परासिया	छिदवाड़ा	13.350	भाग
कुल क्षेत्र :					29.550 हेक्टेयर (लगभग) या 73.02 एकड़ (लगभग)	

अनुसूची क-1, क 2 और क 3 का कुल क्षेत्र— $18.650 + 64.750 + 29.550 = 112.950$ हेक्टेयर (लगभग)

या

$$46.08 + 159.99 + 73.02 = 279.09 \text{ एकड़ (लगभग) ।}$$

सीमा वर्णन :

- झ-ट : रेखा "झ" बिन्दु से आरंभ होती है और ग्राम डोंगर परासिया से होकर जाती है और "ट" बिन्दु पर मिलती है ।
- ट-ठ : रेखा खमरा जेथू और खिरसवोह ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ जाती है और "ठ" बिन्दु पर मिलती है ।
- ठ-ड : रेखा, ग्राम खमरा जेथू से होकर जाती है और "ड" बिन्दु पर मिलती है ।
- ड-झ : रेखा, सरकारी वन खंड सं० 65 और ग्राम खमरा जेथू सरकारी वन खंड सं० 65 तथा ग्राम डोंगर परासिया की सम्मिलित सीमा के साथ-साथ जाती है और आरंभिक बिन्दु "झ" पर मिलती है ।

[फा०सं० 43015/10/96—एल०एस० डब्ल्यू०]

श्रीमती पी०एल० सैनी, अवसर सचिव

New Delhi, the 3rd December, 1996

S.O. 3410.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedules hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan bearing No. C-1(E)/III/GR/(603-596 dated the 22nd May, 1996 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines Nagpur-440001 (Maharashtra) or in the office of the Collector, Chhindwara (Madhya Pradesh) or in the office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands covered by this notification shall deliver all maps, charts and other documents referred to in sub-section(7) of section 13 of the said Act to the Officer in Charge/Head of the Department (Revenue,) Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur-440001 within ninety days from the date of publication of this notification.

SCHEDULE-‘A1’
MAHADEOPURI EXTENSION BLOCK
PENCH AREA
DISTRICT-CHHINDWARA (MADHYA PRADESH)

Plan No. C-1(E)III/GR/603-596 dated the 22nd May, 1996

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Buttaria	7	Parasia	Chhindwara	18.650	Part
Total area :					18.650 hectares (approximately)	
					or	
					46.08 acres (approximately).	

Boundary description :

- A—B Line starts from point ‘A’ and passes through village Buttaria and meets at point ‘B’.
- B—C Line passes along the common boundary of villages Buttaria and Government Forest Block No. 65 and meets at point ‘C’.
- C—A Line passes through village Buttaria and meets at starting point ‘A’.

SCHEDULE ‘A-2’

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Bhandaria	7	Parasia	Chhindwara	64.750	Part
Total area :					64.750 hectares (approximately)	
					or	
					159.99 acres (approximately)	

Boundary description :

- D—E Line passes through village Bhandaria and meets at point 'E'.
- E—F Line passes along the common boundary of village Bhandaria and Government Forest Block No. 65 and meets at point 'F'.
- F—G Line passes through village Bhandaria and meets at point 'G'.
- G—H—D Line passes along the common boundary of village Bhandaria and Government Forest Block No. 65, village Bhandaria and village Buttaria and meets at starting point 'D'.

SCHEDULE 'A 3'

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Donger-Parasia	14	Parasia	Chhindwara	16.200	Part
2.	Khamra-Jethu	15	Parasia	Chhindwara	13.350	Part
Total area					29.550 hectares (approximately)	
					or	
					73.02 acres (approximately)	

Total area in Schedule A-1, A-2 and A-3 = 18.650 + 64.750 + 29.550 = 112.950 hectares (approximately)

or

46.08 + 159.99 + 73.02 = 279.09 acres (approximately)

Boundary description :

- I—J—K Line starts from point I and passes through village Donger Parasia and meets at point 'K'.
- K—L Line passes along the common village boundary of villages Khamra Jethu and Khirsadoh and meets at point 'L'.
- L—M Line passes through village Khamra Jethu and meets at point 'M'.
- M—I Line passes along the common boundary of Government Forest Block No. 65 and village Khamra Jethu, Government Forest Block No. 65 and village Donger Parasia and meets at starting point 'I'.

[No. 43015/10/96-LSW]

Mrs. P. L. SAINI, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 13 नवम्बर, 1996

MINISTRY OF LABOUR

New Delhi, the 13th November, 1996

का० अ० 3411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधकों के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, आभनसील के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल० 22012/593/94-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

S.O. 3411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workmen, which was received by the Central Government on the 5th November, 1996.

[No. L-22012/593/94-IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 23/95

PRESENT :

Shri R. S. Mishra, Presiding Officer.

PARTIES :

Employers in relation to the management of Dhemomain
Colliery of M/s. E.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers—None.

For the Workmen—Sri C. D. Dwivedi, Advocate.

INDUSTRY : Coal.

STATE : West Bengal.

Asansol, the 17th October, 1996

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry Order No. L-22012/593/94-IR(C.II) dated 1st June, 1995 :

"Whether the action of the management of Dhemomain Colliery of M/s. ECL in prematurely terminating Shri Swaminath Bharati w.e.f. 13th April, 1994 is justified? If not, to what relief is the workman concerned entitled?"

2. Advocate Sri C. D. Dwivedi, having been duly authorised by the General Secretary of the Union, appears on its behalf and he files a written intimation that the union is not interested to pursue the reference.

3. In the circumstances 'No Dispute Award' is passed.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू०सी०एल० के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई न० 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5 नवम्बर, 1996 को प्राप्त हुआ था।

[संख्या एल० 22012/200/92-आई०आर० (सी०-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Mumbai No. 2, as shown in the Annexure to the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on the 5th November, 1996.

[No. L-22012/200/92-IR.C-II]

RAJA LAL, Desk Officer

2986 GI/96—3

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, MUMBAI

PRESENTS :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/56 of 1992

Employers in relation to the management of Rajur Colliery, Western Coalfields Ltd.,

AND

Their Workmen.

APPEARANCES :

For the Employer—Mr. G. S. Kapur, Advocate.

For the Workmen—Mr. Vasant L. Patil, Representative.

Mumbai, the 9th October, 1996

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/200/92-IR (C.II) dated 12th October, 1992, had referred to the following Industrial Dispute for adjudication.

"Whether Shri Bharat Shriram Uike, Leader, is entitled to get the re-employment as per Bilateral meeting held on 17th January, 1991 in the presence of General Manager, WCL, Wani Area and members of the Union? If not, to what relief the workman is entitled to?"

2. The Secretary, Lal Zenda Coal Mines Mazdoor Union, filed a statement of claim at Ex. 3. It is contended that in view of the settlement dated 10th March, 1990, Bharat Shivram Leader was taken on duty from April, 1990. He was working continuously but his service was terminated without assigning any reasons on 6th October, 1990. No departmental inquiry was held against him. It is averred that his attendance was quiet satisfactory. While terminating the service of Bharat Shivram the management adopted pick and choose policy. In fact the worker who have less attendance than Bharat were kept in service. For example the attendance of Ramdas Maruti Dhun and that of Ramesh Ankulu is much less than Bharat. On 17th January, 1991 there was a discussion between General Manager Wani Area, WCL through the union. It is averred that he made application on 25th February, 1991 to Area Manager, Rajur Colliery, WCL. On receipt of that application the Area Manager wrote a letter dated 15th April, 1991, to the Deputy Chief Personnel Manager, Wani Area, Chandrapur. But no action has been taken on the management. It is therefore proved that Bharat Shivram Uike, Leader be directed to be reinstated in service declaring his termination illegal alongwith back wages and costs of the litigation may be awarded to the union.

3. The management resisted the claim by the written statement Exhibit-5. It is averred that the reference is not maintainable in law as it is not a dispute within the meaning of section 2K of the Industrial Disputes Act. It is averred that there is no workman by name Bharat Shriram Uike in Rajur Colliery as mentioned in the reference but there is one Bharat Shivram Uike. Under such circumstances the reference is defective.

4. The management pleaded that the union Lal Zenda Colliery Mines Mazdoor at Rajur Colliery is not a registered Trade Union in terms of the Industrial Disputes Act and cannot represent the case. It is averred that the grievance cannot constitute an Industrial Dispute. Bharat was not in regular employment. He was a casual worker. It is submitted that Bharat was appointed on 17th April, 1990 to meet the requirements of casual nature at Rajur Colliery. As per the norms of working he has to give a loading work of three tubs minimum per day. But he used to give the work of 2.5 tubs per day and his attendance was very poor. He was warned regarding his unsatisfactory attendance, but he did not improve. It is therefore his name from the casual loaders roll was removed from 6th October, 1990, as it was then not in the interest of the management.

5. The management pleaded that there was no formal understanding between the management and union on 17th January, 1991 which cannot be called as a settlement under the Act, as claimed by the union. It is averred that as there were administrative problems one more chance to work as a casual labour cannot be given to the worker. For all these reasons it is submitted that the worker is not entitled to any relief and the reference may be answered in favour of the management.

6. My Learned Predecessor frames issues at Exhibit-6. The issues and my findings there on are as follows :

Issues	Findings
1. Whether the present reference is not tenable in law ?	The reference is tenable
2. Whether the workman in question is Shwara M. Uike and not Bharat Shriram Uike, as mentioned in the schedule of the Reference ?	No.
3. Whether no Industrial Dispute, as contemplated under section 2(k) of the Industrial Disputes Act, 1947 existed in the present case ?	Industrial Dispute exists.
4. Whether the Lal Zenda Coal Mines Mazdoor Union is not competent to espouse the cause in question on behalf of the workman in question ?	Competent.
5. Whether Shri Bharat Shriram Uike, Loader, is entitled to get the re-employment as per Bilateral meeting held on 17-1-1991 in the presence of General Manager, WCL, Wani Area and members of the union ?	Yes.
6. If not, to what relief the workman is entitled ?	Does not survive.
7. What Award ?	As per order.

REASONS

7. In the reference the name of the worker is mentioned as Bharat Shriram Uike. In the statement of claim the General Secretary had mentioned the name of the worker as Bharat Shivram Uike, the Loader. The name of the father appeared to be incorrectly typed in the reference. Patil, the union secretary affirmed the name of the worker to be Bharat Shivram. It is not disputed by D. K. Chandak (Ex-14) who is the senior personnel officer at Rajur Colliery, Rajur Sub-Area. He is not Shivram Uike as contended in the written statement.

8. Uike was appointed as a casual loader. In April, 1990 on the basis of the settlement arrived between management and WCL. Patil, the General Secretary of the union admits that he worked for 18 days in June, 20 days in August, 23 days in September and 4 days in October. He was terminated on 6th October, 1990. The union raised a demand of his reinstatement in the discussion which was held with the General Manager, Wani Area, WCL and Lal Zenda Coal Mines Mazdoor union which was held on 17th January, 1991.

9. The worker on the basis of the settlement through its union gave an application dated 25th February, 1991 for reemployment. It was in compliance with the discussion which took place in the meeting. But he was not re-employed. It is therefore, he raised a demand before the Assistant Labour Commissioner through the union. The matter was not settled and he sent his failure report to the Labour Ministry. Thereafter the Government had sent this reference. It can be seen that the grievance which was raised by the worker was espoused by the union before the management and then before the Assistant Labour Commissioner. The same union is representing the worker before the Tribunal. I do not find that there is any reason to hold that it is not competent to do so. The worker was not reemployed in the terms of the settlement and therefore the dispute has to be said to be an Industrial Dispute.

10. Chandhok (Ex-14), the Senior Personnel officer in his evidence affirmed that the union discussed the case of reemployment of the worker at area level meeting dated 17th January, 1991 in which it was felt that one more chance would be given to him provided he gave assurance/undertaking and improve work load and attendance. In the cross-examination, he accepts that in view of that discussion the worker sent an application through the union on 25th February, 1991 (Ex. 2/5). In other words so far as the compliance by worker was concerned it was complied.

11. Chandhok affirmed that after examining the man power position it was observed that there was no minimum requirement to tub loader against which the worker can be considered. He affirmed the minutes of discussion which took place at area level are of an informal nature and could not terms as a settlement in terms of the Industrial Disputes Act. No doubt that can be the legal position. But it is always seen that looking to the industrial peace and Industrial growth the discussion which took place at such a meeting is always implemented. The person like Assistant General Manager, who attends such meetings has its importance. It is the assurance by the management that there will be compliance of the discussion. In that meeting it was decided to give one chance to the worker by reemploying him. If he did not comply with the necessary requirements the management was at liberty to take any action. But when he gave an application in terms of the discussion he should have been appointed. It can be further seen that in the written statement in paragraph 19 the management had contended that since there were administrative problems one more chance to work as a casual labour cannot be given to the workman. That cannot be the answer to the claim of the worker.

12. I may mention it here was so far as the earlier non attendance, non complying the required work load by the worker has nothing to do with the present reference. It could be seen that after his termination a meeting was held wherein it was decided that he will be given one more chance to improve. In fact the management should have done it and avoided the worker to approach to the Assistant Labour Commissioner. It is not the case at that in the meeting it was held that he should be given all monetary benefits from his termination till re-employment. But it was a simple case of giving reemployment which was agreed upon. Here in his statement of claim the workman has claimed continuity in service alongwith back wages which he is not entitled to. What is to be seen whether he is to get reemployment as per the Bilateral meeting held on 17th January, 1991. For the reasons stated above he is entitled to. In the result I record my findings on the issues accordingly and pass the following order :

ORDER

Shri Bharat Shriram Uike, Loader is entitled to get the re-employment as per Bilateral meeting held on 17th January, 1991 in the presence of General Manager, WCL, Wani Area and members of the union.

The management is directed to give him appointment forthwith.

He is not entitled to any monetary benefit as claimed.

S. B. PANSE, Presiding Officer
9-10-96.

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार ई०सी०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में, केन्द्रीय सरकार को औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल० 22012/64/95-आई आर (सी-II)]
राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workman, which was received by the Central Government on 5-11-1996.

[No. L-22012/64/95-IR (C-II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 2/96

PRESENT :

Shri R. S. Mishra, Presiding Officer.

PARTIES :

Employers in relation to the management of J. K. Nagar
(R) Colliery of M/s. E.C. Ltd., and their work-
man.

APPEARANCES :

For the Employers—None.

For the Workman—None.

INDUSTRY : Coal

STATE : West Bengal

Dated, the 15th October, 1996

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No L-22012/64/95-IR (C-II) dated 30-1-1996.

"Whether the action of the management of J. K. Nagar (R) Colliery of E.C.L. in changing the service conditions of Shri Panchu Bhuia, U.G. Loader is legal and justified ? If not, what relief the workman is entitled to ?"

2. Notice had been issued twice and particularly the second notice had been duly received by the designated representative of the union, as reflected by the postal acknowledgement card. Yet no step is taken by the union and obviously the union does not want to pursue with the dispute.

3. Hence "No Dispute Award" is passed in this case.
case.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू०सी०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं० 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार का 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/43/93-आई० आर० (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on 5-11-1996.

[No. L-22012/43/93-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2 MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/51 of 1993

Employers in relation to the management of Rajur
Colliery of Western Coalfields Limited

AND

Their Workmen.

APPEARANCES :

For the Management—Shri B. N. Prasad, Advocate.

For the Workmen—Shri M. S. Nandanwar, Advocate.

Mumbai, the 11th October, 1996

AWARD—PART I

The Government of India, Ministry of Labour by its Order No. L-22012/43/93-IR (C-II) dated 7-6-93, had referred to the following industrial dispute for adjudication.

"Whether the action of the management of Sub-Area Manager, Rajur Sub-Area of W.C. Ltd., Dist. Yeotmal in terminating the services vide letter No. WCL/RSA/PER/3189 dated 16-2-1992 of Shri Bhaskar Vasudeo Wrarkar, Ex. Underground Loader, Rajur Colliery, is Vasudeo Wararkar, Ex. Underground Loader, Rajur Colliery, is justified ? If not, to what relief the workman is entitled for ?"

2. Bhaskar Vasudeo Wararkar, filed a statement of claim at Exhibit-2. It is contended that he was working as underground loader at Rajur Colliery for about last ten years. On 16-5-90 when he was on duty he met with an accident and became unconscious. He was removed to the hospital and was treated there. Thereafter the medical authorities advised to give him a light work which he was allotted till 30-4-91. But he could not improve.

3. The worker is a resident of Belora. He was permitted to have the medical treatment from Ghuggus Hospital as outdoor patient during his leave period. He was also admitted as indoor patient at Ghuggus hospital between 20-5-91 to 19-7-91 and thereafter at New Majri hospital till 28-9-91. He was advised to take medical leave which he took. Ultimately it was declared by the medical authorities that the right arm joint of the workman has been disfigured. It was a permanent disability. At that juncture the management changed its attitude.

4. The management issued a chargesheet against the worker contending that he is absconding from the duty. He gave his explanation to it on 27/11/91. It is averred that the chargesheet which was issued to the workman is mala fide and without any merit. It is averred that the domestic inquiry which was conducted against the workman is against the principles of Natural Justice. He was not given the copies of the documents on which the management relied. It is asserted that he was also not given a list of witnesses on which the management wanted to rely. It is averred that no copy of the inquiry report was given to the worker so he could not prefer an appeal against the order. It is averred that he was not represented by a co-worker which he was entitled to. It is averred that he was also not given

a show cause notice regarding the proposed penalty. All these facts clearly go to show that the domestic inquiry was a farse and it was against the Principles of Natural Justice. He prayed that his termination dated 16/2/92 is illegal and he may be reinstated in service with full back wages and continuity. He also claimed consequential benefits.

5. The management resisted the claim by the written statement Exhibit-4'. It is asserted that the worker was absent unauthorisedly without obtaining leave from leave employers. It is therefore a charge sheet dated 24/11/91 was served to him on the ground of habitual absenteeism and unauthorised absence without obtaining any leave from the employers exceeding ten days. The explanation which was submitted by the worker was not accepted. Hence the domestic inquiry was held against him. It was also informed that he could take assistance of a co-worker in the inquiry. The worker took and adjournment contending that his co-worker is not available. Therefore the matter was adjourned. On 30/1/92 when the inquiry was conducted the worker participated and his co-worker was also present. The inquiry was conducted in Hindi. The documents were presented before the inquiry officer in his presence. The worker and his co-worker were given an opportunity to cross-examine the management witnesses which the co-worker availed of. But the worker refused to cross-examine. The worker examined himself at his defence witness. The inquiry officer submitted his report which is based on the evidence lead before him. All the proceedings and the inquiry report was send to the disciplinary authority who agreed upon the report and the findings of the inquiry officer that the worker is guilty. He therefore decided to remove the worker. Accordingly the worker's services were terminated by a letter dated 16/2/90 with the approval of the competent authority. It is averred that no appeal was filed against the said termination by the worker. They submitted that all these facts clearly go to show that the inquiry which was conducted against the worker was as per the Principles of Natural Justice. It is emphatically denied that the charge-sheet which was issued to the worker was to victimise him and malafide one. It is submitted that the worker is not entitled to any relief as claimed and the reference may be answered accordingly.

6. The worker filed a rejoinder at 'Ex-8'. and reiterated the stand which he took in the statement of claim and denied the contention taken by the management in the written statement. To substantiate his contentions he relied upon different authorities in the rejoinder itself.

7. The issues are framed at Exhibit-12'. Issue No. 1 is treated as preliminary issue. The issue and my finding thereon is as follows;

Issues	Findings
1. Whether the inquiry which was held against the workman against the Principles of Natural Justice?	Yes.
REASONS	

8. On 23/24-11-91 a chargesheet was issued to the worker Bhaskar Vasudeo Varankar 'Ex-7/1'. It is mentioned in this chargesheet that the worker is absent from duty from 22nd June 1991 without any sanction. He remained absent continuously. Under such circumstances he has committed a mis-conduct as contemplated under sec-

tion 17(1)(d)(e)(s) of the standing orders. He was further asked to give reply to the said charge-sheet within three days. It is not in dispute that the worker had reply to the said chargesheet on 27/11/91(Ex-7/2). His explanation was not found satisfactory and one S.N. Golkar was appointed as the inquiry officer and one N.U. Thool was appointed as the Presenting officer (Ex-7/3).

9. Bhaskar Wararkar (Ex-10) affirmed that the chargesheet which was issued to him was vague. He pleaded that he was not provided with the documents on which the management relied in a domestic inquiry nor he was given the list of witnesses. He also contended that he was not represented by coworker. Under such circumstances the inquiry which was held against the worker was against the Principles of Natural Justice.

10. S.N. Golaakar (Ex-15) the inquiry officer affirmed that the inquiry which was held against the worker as per the Principles of Natural Justice and no prejudice is caused. The inquiry proceedings are at Exhibit-7/4. From the proceedings it appears that one Wahid Ali is the co-worker of Bhaskar Wararkar. Bhaskar affirmed that he was not his co-worker, but the management asked that man to work as his co-worker and he was siding with the management. The Learned Advocate for the worker argued that the proceeding itself demonstrate his position. The first date of the domestic inquiry was 21/1/1992. On that date the proceeding could not be proceeded with as there was no co-worker to defend the case of Bhaskar. Therefore the proceeding was adjourned to 23/1/92. On that date Wahid Ali was present along with Bhaskar but the inquiry officer could not proceed with the matter. He had signed the inquiry proceeding of that date. The proceeding dated 30/1/92 speaks that the inquiry officer had given permission for Wahid Ali to act as a co-worker. Infact on the earlier date itself Wahid Ali had signed the proceeding. it means he was accepted as co-worker. He had also cross-examined the management witnesses. It is tried to argue on behalf of the worker that the cross-examination was not proper and therefore it has to be said that he was not properly represented. I am not inclined to accept this submission. It is because admittedly this Wahid Ali was working with Bhaskar. He signed the proceeding as a co-worker. If really the worker would have any grievance he would have immediately raised his objections of signing the proceedings by Wahid Ali. I must say that the expected cross-examination is not carried out by Wahid Ali, but that does not mean that the management had not given an opportunity to the worker to be represented by the co-worker of his choice. I therefore find that this contention which is raised by the worker has no merit.

11. M.U. Thool was the witness for the management. He produced attendance register and deposed to the fact that the worker remained absent on many occasions and had given details of his attendance from January 1990 to July, 1991. It is pertinent to note that the copy of the attendance register was not given to the worker. It is tried to argue on behalf of the management that it was never asked for. It is wellsettled law that the copies of the documents on which the management relies should be supplied to the delinquent. It is tried to argue on behalf of the management that the procedure and the evidence contemplated in the criminal proceeding is not applicable in a domestic inquiry. No doubt that position is there. But that does not mean that the copies of the documents are not to be given to the worker. These facts clearly suggests that the proceeding which was held in the name of domestic inquiry are against the Principles of Natural Justice.

12. So far as the demand of the list of witnesses is concerned as no witnesses were examined there was no question of giving any witness list to the worker. Bhaskar had affirmed that the chargesheet was vague. After perusal of the chargesheet it can be seen that it is a vague chargesheet. No particulars are given which are infact required to be given in a case like this. While issuing charge-sheet it was informed to him that he attended the duties late. But there is no record to show that how many days and on which date he attended the duties late. So is the case of his non-attendance of the duties for more than 10 days without giving permission. It can be further seen that in a reply to the charge-sheet he had contended that he met with an accident when he was performing the duty and was treated by the doctors of the company. So far as this position is concerned it does not reflect in the inquiry proceedings. The worker had filled the injury slip showing that when he was working in the second shift he sustained the injury on 16/5/90.

13. Along with the statement of claim at Annexure-4 he had produced copy of the chargesheet which was given to him. It can be seen that so far as charge-17 (1) (d) (g) is concerned it is scored. It means that no inquiry was held against that charge. The inquiry report which was submitted by the inquiry officer does not specifically say which are the charges proved against the worker. It can be further seen that the Learned Advocate for the management submitted that the charges falling under clause (17)(1) (d) and 17(1)(g) are almost analogous. (a) deals with habitual late while (d) deals with habitual misconduct. According to him habitual absence may also mean habitual misconduct. According to him therefore at any stage the inference has to be drawn to signify habitual absence as habitual misconduct. I am not inclined to accept this argument. When there are two specific clauses for two different acts they cannot be said to be analogous.

14. Admittedly the worker was not given an inquiry report. It is tried to argue on behalf of the management that the standing orders do not provide with supply of inquiry report. In Managing Director V/s. ECIL Hyderabad and Ors. V/s. B. Karunakaran & Ors. wherein the constitutional bench had observed that "Since the denial of the report of the enquiry officer is a denial of a reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Article 226 of the Constitution or Section 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy

of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is, thus, a sine qua non for a valid, fair, just and proper procedure for the delinquent to defend himself effectively and efficaciously".

15. Looking to the ratio in the above stated authority the contention which is taken by the management that there was no need to supply the inquiry report to the worker nor there is no clause in the standing order for supply of such a copy has not merit at all. On this ground alone itself the inquiry which was held against the workman has to be set aside.

16. It can be seen that as the domestic inquiry which was held against the worker was against the Principles of Natural Justice the evidence which was recorded cannot be said to be a proper one. Further more the findings of the inquiry officer on its basis cannot be said to be correct. I already observed above the inquiry officer had not given his findings separately looking to the different charges. In the result I record my findings on the issues accordingly and pass the following order:

ORDER

The inquiry which was held against the workman was against the principles of natural justice.

S. B. PANSE J
Presiding Officer,

11-10-96

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार ई०सी०एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/319/94-आई०आर० (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workmen, which was received by the Central Government on the 5th November, 1996.

[No. L-22012/319/94-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 3/95

PRESENT :

Shri R. S. Mishra, Presiding Officer.

PARTIES :

Employers in relation to the management of Belbaid
Colliery of M/s. E.C. Ltd.,

AND

Their Workmen.

APPEARANCES :

For the Employers—None.

For the Workmen—None.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 10th October, 1996

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(319)/94-IR(C.II), dated 5th January, 1995.

"Whether the action of the management of Belbaid Colliery of Kunustoria Area of E.C.L. in prematurely superannuating Shri Bhengari Harijan, Mechanical Fitter w.e.f. 1st July, 1992 without determination of his apparent age is legal and justified? If not, to what relief is the workman entitled to?"

2. The case is fixed to today and even though notice has been issued three times, including this time, no one appears on behalf of the union or workman and no step is also taken on their behalf. Service of notice is sufficient, the same having been duly acknowledged, as it appears from the postal acknowledgement card. Obviously the union does not want to proceed with the dispute.

3. Hence "No Dispute Award" is passed in this case.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार ई०सी०एल० के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/95/95 आई०आर० (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workmen, which was received by the Central Government on the 5th November, 1996.

[No. L-22012/95/95-IR (C.II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL

Reference No. 55/95

PRESENT :

Shri R. S. Mishra, Presiding Officer.

PARTIES :

Employers in relation to the management of Bahula
Colliery of M/s. E.C. Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers—None.

For the Workmen—Rakesh Kumar, Asstt. General Secretary.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 17th October, 1996

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/95/95-IR (C.II) dated 27th September, 1995.

"Whether denial of the management to accept the date of birth as 1st July, 1947 of Sh. Harinder Yadav, Long Face worker, Bahula Colliery, P.O. Banula District Burdwan (WB) is justified or not. If justified what relief the workman is entitled to?"

2. The Asstt. General Secretary of the union today i.e. 17th October, 1996 appears and files a written memo intimating that because of a settlement with the management the union withdraws the dispute and prays for passing a No Dispute Award.

3. Accordingly a 'No Dispute Award' is passed in this case.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार ई०सी०एल० के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/512/94-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Asansol as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workmen, which was received by the Central Government on the 5th November, 1996.

[No. L-22012/512/94-IR (C.II)]

RAJA LAL, Desk Officer

ANNEXURE

Industrial Dispute No. 38 of 1993

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL

BETWEEN

Reference No. 26/95

The Chief Vice President,
S.C. Workers Union (AITUC)
Bellampalli, Dist. Adilabad

.. Petitioner

PRESENT :

AND

PARTIES :

Employers in relation to the management of Dhemomaim
Colliery of M/s. E.C. Ltd.The General Manager (Personnel)
S.C. Company Limited,
Kothagudem Collieries,
District, Khammam

.. Respondent

AND

Their Workmen.

APPEARANCES :

APPEARANCES :

For the Employers—None.

For the Workmen—Sri C. D. Dwivedi, Advocate.

Sri B. Gangaram, Representative for the Petitioner.
M/s. K. Srinivasa Murthy and G. Sudha, Hony. Secre-
tary of A.P. Chamber of Commerce and Industries
for the Respondent.

INDUSTRY : Coal. STATE : West Bengal.

AWARD

Dated, the 14th October, 1996.

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012/512/94-IR(C-II) dated 26th May, 1995.

"Whether the action of the management of Dhemomaim Colliery of M/s. E.C. Ltd. in not allowing to resume duty to Sh. Bhura Harijan Under Ground Loader is justified? If not to what relief is the concerned entitled to?"

2. Advocate Sri C. D. Dwivedi appears on behalf of the union and files letter of authority given by the union. He also intimates in writing that the union is not any more interested in the matter.

3. Hence 'No Dispute Award' is passed in this case.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/95/93-आईआर (सी-II)]

राजा लाल, चैम्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on 5-11-1996.

[No. L-22012/95/93-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri. V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I
Dated, 8th day of October, 1996

The Government of India, Ministry of Labour, New Delhi made a reference to this Tribunal by its Order No. L-22012/95/93-IR (C-II) dated 27-10-1993 under Section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute mentioned in the Schedule which reads as follows :

"Whether the action of the management of M/s. S.C.C. Ltd., Kothagudem, in denying promotion to Sri Ch. Nageswara Rao, Electrician Cat. V MVK. 5 Incline as Electrical Chargehand Gr. B is legal and justified? If not, to what relief the concerned workman is entitled to?"

This reference taken on file and notices were served on both parties.

2. The Representative of the workmen filed a claim statement contending as follows :

Sri Ch. Nageswar Rao is a workman for whose promotion this reference was made (hereinafter to be called as Petitioner). The Petitioner joined service as Electrician in 10-2-1977. He was promoted as Electrician Category IV on 1-5-1979 and Cat. V on 1-9-1982. He passed L.E.E. in September 1987 and has been acting as Electrical Supervisor since 30-7-1988. He passed Electrical Supervisor test on 5-1-1990. He is entitled to be promoted as Electrical Supervisor but he is not given promotion on the ground that he did not pass the test before 3-3-1989. The plea of the Respondent-Management is not correct. He passed the test by 12-3-1990 when the Settlement was arrived at. His junior K. Rama Mohan Rao who acquired Electrical Supervisor Certificate after 12-3-1990 was given promotion. This is discriminatory. The petitioner also worked as Incharge Electrical Engineer for some time. So denial of promotion to the petitioner is not justified.

3. The Respondent-Management filed a counter admitting the dates of appointment, promotions and qualifications of the petitioner and himself acting as Electrical Supervisor, but contending as follows :

The Petitioner was not qualified on 3-3-1989 when there was Settlement under Section 12(3) of the I. D. Act. The second Settlement dated 12-3-1990 was arrived at for giving some exemption for one time as sufficient number of candidates could not be secured for promotion under the first Settlement. The Petitioner was not qualified by the first Settlement and so he could not be considered after the second Settlement also. There was also no vacancy to appoint him. He was not promoted. The Petitioner belongs to Bellampally Region whereas K. Rama Mohan Rao belongs to Kothagudem Region. The promotion of Grade-B is Region wise seniority as per the Settlement. So, the Petitioner cannot

compare himself with K. Ram Mohan Rao. There are more Mines in Kothagudem Region and more vacancies. There are surplus Electrical Supervisors in Bellampally to be adjusted in vacancies in other places. Otherwise they will have to be retrenched. The petitioner cannot be promoted. The petition is liable to be dismissed.

4. The point for consideration is whether the workman Ch. Nageswar Rao is entitled for promotion as Electrical Supervisor Grade B or Electrical Charge Hand from 1-4-1990?

5. Point.—The petitioner is examined as WW-1 and he filed Exs. W-1 to W-22. The Deputy Personnel Manager of the Company is examined as MW-1 and he filed Exs. M-1 to M-7.

6. The admitted facts of the case are as follows :—

The Petitioner Ch. Nageswar Rao joined the service of the Singareni Collieries Co. Ltd., as Apprentice on 18-2-1977. Subsequently he was promoted as Electrician Cat. IV in 1979 and Electrician Category V in 1982. While he was acting as such, he acquired Diploma in Electrical Engineering L.E.E. as per Ex. W-1 Certificate in September, 1987. There are posts of Electrical Supervisor which are also called as Electrical Chargehand in the Mines. They are statutory posts. One has to obtain a Certificate of Competency for Electrical Supervisor from Andhra Pradesh Electrical Licensing Board appointed by Government of Andhra Pradesh under A.P. Electrical Licensing Rules, 1987, to get promotion as Electrical Supervisor or Electrical Chargehand. It is a 'B' Category post. Acquiring of L.E.E. Diploma does not help the petitioner to get promotion to 'B' Category.

7. Due to lack of qualified hands and non cooperation of chargehands working in other places in Bellampally Region, the Petitioner was kept incharge of the post of Charge Hand since 1988, though he was not qualified. There was a Settlement Ex. M-1 between the six recognised Unions and the Management under Section 12(3) of the I. D. Act on 3-3-1989 in the presence of the Deputy Chief Labour Commissioner, Central with regard to several items. Ex. M-1 is a copy of the said Settlement and Ex. W-5 contains the relevant portion. The subject with regard to Electricians is in page 3 of the Annexure I of the Settlement. Clause (viii) is relevant and it reads as follows :

"Electrical Chargehand possessing Electrical Supervisory Certificate and authorised as Electrical Supervisors will be placed in Grade-B only. To fill these posts of chargehands, all those who are in Cat-VI with Electrical Supervisory Certificate will be considered for promotion in the first instance. Later on those who are having eight years service in Category-V with Electrical Supervisory Certificate will be considered. This will be the minimum qualification for an Electrical Supervisor. Existing procedure of Trade Test and interview for these appointments will continue."

The Petitioner has been acting as Electrician Cat. V since 1982 but he does not possess the Electrical Supervisory Certificate by the date of the Settlement. In pursuance of this Settlement, selections were made and 12 persons were appointed as Electrical Chargehands in Grade B by Ex. W-6 proceedings dated 2-8-1989. Though it is not there in the pleadings and evidence, in the second written arguments dated 8-12-1995 filed by the Management at the instance of the Court, it was stated that though 12 persons were appointed by Ex. W-6 only six have joined and another person who was appointed in the proceedings dated 20-9-1989 also joined. In all 7 persons who were fully qualified joined. There are

23 more vacancies. So there was another settlement Ex. M-2 dated 12-3-1990. Ex. W-7 is a copy of the same. Due to paucity of qualified candidates the conditions were relaxed for one time. Under Clause 19 of the said Settlement which reads as follows :

"ELECTRICIANS POSSESSING ELECTRICAL SUPERVISORY CERTIFICATES :

As a one time measure, Management agrees to the following modifications to the clause on Electrical Supervisors in the Settlement dated 3rd March, 1989.

- (a) Electricians who have completed 3 years service in Cat-V and possess Electrical Supervisory Certificate and officiating as Electrical Supervisors will be placed in Grade-B.
- (b) Electricians who have less than 3 years' service in Cat-V and possess Electrical Supervisory Certificate will be placed in Grade-C and on completion of three years in Cat-V and Grade C put together will be placed in Grade-B.
- (c) Electricians in Cat-IV who possess Electrical Supervisors Certificate and have been officiating as Electrical Supervisors prior to 3rd March, 1989 will also be placed in Grade 'B'.

All future placements in Grade B will be in accordance with the Settlement dated 3rd March, 1989."

8. The petitioner secured the Licence Ex. W-3 on 5-1-1990. The Management called for details of all qualified candidates from the concerned officers by Ex. W-8 (Ex. M-3 dated 5-5-1990). The names of qualified candidates in Bellampally Region were submitted and Petitioner was one among them. He was asked to appear for interview on 5-9-1990 by Ex. W-9 notice. He appeared for the interview but he was not selected, but 23 others were selected. The petitioner filed Exs. W-10, W-11 and W-12 stating that the persons selected in the interview were appointed by these orders. Ex. W-10 relates to Ramagundam Area and not the Bellampally Area. Exs. W-11 and W-12 relate to Bellampally Area and 20 persons were promoted by these two orders, dated 10-11-1990 and 20-11-1990 respectively. Another three persons were promoted by an order dated 27-11-1990 and this order is filed alongwith the additional arguments. It is marked as Ex. M-9. The petitioner was not selected though he was also qualified by them. On the suggestion of the Tribunal the Respondent filed the Statement showing the particulars of Electricians who have passed the Electrical Supervisory Examination and called for an interview on 5-9-1990. It is marked as Ex. M-10. The Petitioner's name finds place in S. No. 3 in Bellampally Area. In all 25 candidates were called for and 23 only were selected and promoted. The petitioner and one P. David Wilson were not selected and promoted.

9. The petitioner has been making representations for promotion. His contention is that he was qualified by the date of the second Settlement but he is not given promotion. The Management took a stand before the Conciliation Officer that the petitioner was not qualified before the Settlement dated 3-3-1989 and so he was not promoted and appointed. We find this in conciliation failure report Ex. W-21 dated 14-10-1992. The contention of the Petitioner is that he was qualified by the date of the second Settlement and interview and so he should also be selected. The present contention of the Management is two fold. Firstly under the Second settlement the length of service in Category V etc., was reduced and the date of passing the test was no changed. Secondly there is no vacancy for the petitioner and the existing 30 vacancies were filled up in batches by employees who are senior to the petitioner. There is force in the contention of the Management. The first settlement stated that the candidates should have secured Electrical Certificate by that date and under the second Settlement only the length of service in Cat. V or Cat. VI were reduced. I have seen entries with regard to each candidates in Ex. M-10 and no candidate who secured certificate subsequent to the Petitioner were selected. They all secured certificate in 1987 and 1988 whereas the Petitioner secured the certificate in 1990 and David Wilson secured the Certificate in 1989. Mr. David does not appear to have complained though he was not promoted. When the Management witness was cross examined

about continuing the petitioner in a clear vacancy inspite of the selections, he relied on Naxalism prevailing in the area. He stated that some persons who are promoted have continued to work in place where they were working earlier to promotion and refused to go to new places. The Management was not able to do anything due to the prevalence of Naxalism. Inspite of promotion and posting at another place, they refused to handover charge and move out. It resulted in more Electrical Chargehands Grade B working at one place though there are less number of posts sanctioned there and no promoted men is manning the sanctioned post in another place. So the Management is forced to continue persons like the Petitioner as incharge though it is a regular post. It was suggested to MW-1 that the Management is taking shelter under the Naxalism to hide the irregularity committed by it. I am not agreeing with the representative of the workmen. Any person who worked in these Naxalite dominated area knows the situation there. SIKASA a fronted organisation of Naxalite whose membership consists of unruly elements in the employees of the Collieries runs the Government in the Collieries. The total number of posts of Electrical Chargehands available in the Bellampally Region are shown in Ex. M-11 filed by the Management with Additional written arguments.

10. I, therefore, hold that the Management is justified in not promoting the Petitioner to Grade 'B' as he is not qualified by the date of the settlement and also as there were no vacancies when others were appointed in pursuance of the Second Settlement.

11. The Petitioner relied upon the promotion of K. Ram Mohan Rao who is junior to him by Ex. W-14 order dated 29-1-1992. It is true that he is junior to the petitioner and he secured the Certificate Ex. M-4 three months after the petitioner but K. Ram Mohan Rao belongs to Kothagudem Region. He does not belong to Bellampally Region. It was agreed by the Management and the Unions in Clause 6 (ii) of Ex. M-1 Settlement dated 3-3-1989 that a promotion of Tradesman will be region wise seniority upto Grade-B/Excavation Group and on Company-wise seniority beyond Grade-B/Excavation Grade B". The Petitioner belongs to Bellampally Region whereas K. Rama Mohan Rao belongs to Kothagudem Region. He cannot compare himself with K. Rama Mohan Rao.

12. Both the parties have filed documents with regard to liberalising the rules subsequently for promoting candidates as Electrical Chargehand by Ex. W-15 etc. It is found that there are lot of vacancies in Kothagudem Region but there are no qualified candidates and so liberalisation started. The qualified candidates working in other regions were also given opportunity to serve in Kothagudem Region. Accordingly the Petitioner gave his option Ex. M-8 and he was promoted and posted as Chargehand at Kothagudem Region. He also reported to duty as per Ex. M-12 on 10-11-1995. The petitioner was also given promotion as Electrician Category VI in 1991. He cannot have any grievance.

13. In the result, an Award is passed holding that the petitioner is not entitled for any relief.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 8th day of October, 1996.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of evidence

Witnesses examined

for the Petitioner :

WW-1—Ch. Nageswar Rao.

Witnesses examined

for the Respondent :

MW-1—P. A. V. V. Sarma.

Documents marked for the Petitioner

Ex. W-1/8-1-86—Original certificate of Diploma in Electrical Engineering.

2986 GI/96—4

Ex. W-2/5-5-88—Office Order authorising WW-1 to work as Electrical Supervisor (Xerox copy).

Ex. W-3/5-1-90—Certificate of competency for electrical supervisor (Xerox copy).

Ex. W-4/22-1-94—Lr. dated 22-1-91 addressed to the Chief General Manager (Project) Bellampally by Superintendent of Mines, MVK 5 Incline regarding the working particulars of WW-1 as Asst. Engineers (Xerox copy).

Ex. W-5 .. —Extract from the Memorandum of Settlement dated 3-3-89 regarding cadre scheme of Electricians.

Ex. W-6/2-8-89—Xerox copy of office order regarding the promotions of Electrical Chargehands.

Ex. W-7/12-3-90—Xerox copy of Memorandum of Settlement dated 12-3-90.

Ex. W-8/5-5-90—Xerox copy of circular regarding implementation of Item No. 19 of Settlement dated 12-3-90.

Ex. W-9/29-8-90—Call letter for interview to WW-1 for post of Electrical Chargehand.

Ex. W-10/10-11-90—Xerox copy of office order regarding promotion of Electrical Chargehands w.e.f. 1-4-90 for 10 Electricians Chargehands Gr. D.

Ex. W-11/10-11-90—Xerox copy of the office order regarding promotion of Electrical Chargehands w.e.f. 1-4-90 for 12 electricians chargehands Gr. D.

Ex. W-12/27-11-90—Xerox copy of office order regarding promotion of Electrical Chargehands w.e.f. 1-4-90 for 8 persons.

Ex. W-13/27-11-90—Xerox copy of office order regarding promotion of Electrical Chargehands from 1-4-90 for 13 persons.

Ex. W-14/29-1-92—Xerox copy of office order of promotion of batch of 4 electricians were promoted.

Ex. W-15/22-3-93—Copy of circular regarding modifying the earlier order and issuing revised orders regarding filling up of vacancies of Electrical Chargehands who possess Supervisory Certificate.

Ex. W-16/2-3-93—Xerox copy of promotion order promoting of Electrical Chargehand w.e.f. 1-3-93.

Ex. W-17/9-2-94—Xerox copy of promoting Electrical, Electrical Chargehand Grade D for 5 persons w.e.f. 1-3-94.

Ex. W-18/9-2-94—Xerox copy of promoting Electricals, Electrician chargehands Grade D for 2 persons w.e.f. 1-3-94.

Ex. W-19/4-2-94—Letter of C.M. regarding surrendering the surplus electrical Chargehand Grade D

Ex. W-20/14-3-92—Representation of the Union to the Director (P.A.W.) S.C. Co. Ltd., Kothagudem.

Ex. W-21/14-10-92—Xerox copy of Conciliation failure report.

Ex. W-22 by consent 16-1-88—Xerox copy of the Circular issued by Asst. CME regarding the proposals of Electrical Supervisors

Documents marked for the Management by consent

Ex. M-1/3-3-89—Xerox copy of the settlement dated 3-3-89.

Ex. M-2/12-3-90—Xerox copy of the Settlement dated 12-3-90.

- Ex. M-3/5-5-90—Circular regarding implementation of clause 19 of the Settlement dated 12-5-90.
- Ex. M-4 ... —Certificate of competency for Electrical Supervisors.
- Ex. M-5/15-2-90—Letter addressed to Sri Thomas, Dy. Chief Manager, Bellampalli.
- Ex. M-6/14-7-94—Xerox copy of surrendering the surplus Electrical Chargehand certificate holder.
- Ex. M-7 14-7-95—Xerox copy of letter calling for the chargehands by the G.M. (Perl.) to all the departments.
- Ex. M-8/21-7-95—Xerox copy of the application of Sri Ch. Nageswara Rao, Electrical Supervisor, Bellampalli.

Documents marked by the Tribunal

- Ex. M-9/27-11-90—Xerox copy of office order promoting Electrician to Electrical Chargehands.
- Ex. M-10 ... —Statement showing the particulars of electricians who have passed the Electrical Supervisory examination.
- Ex. M-11.. —Xerox copy showing the position of Electrical Supervisors, Certificate and Non-certificate holders in Bellampalli Region.
- Ex. M-12/10-11-95—Xerox copy of letter regarding joining report of Sri Ch. Nageswar Rao.

नई दिल्ली, 13 नवम्बर, 1996

का० आ० 3419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्पकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, सम्बन्धित 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 5-11-96 को प्राप्त हुआ था।

[संख्या एल-22012/501/91-आई आर (सी-2)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W. C. Ltd., and their workmen, which was received by the Central Government on 5-11-1996.

[No. L-22012/501/91-IR (C. II)]

RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 MUMBAI.

PRESENT:

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/49 of 1992

Employers in relation to the management of New Majri Colliery of W. C. Limited.

AND

Their Workmen.

APPEARANCE:

For the Employer: Mr. G. S. Kapur, Advocate.

For the Workmen: Mr. S. R. Pendre, Representative.

For the Workmen: Mr. S. R. Pendre Representative.

Mumbai, dated 8th October, 1996.

AWARD—PART—I

The Government of India, Ministry of Labour by its order No. L-22012/501/91-IR(C. II), dated 20-7-1992 had referred to the following Industrial Dispute for adjudication.

"Whether the dismissal of Shri Mahadeorao Madavi, U/GM. Leader from 27-9-1988 and non-payment of subsistence allowance from 18-6-1984 to 27-9-1988 by the Sub-Area Manager, New Majri Colliery, W. C. Ltd., Wani Area, Chandrapur, is legal and justified? If not, to what relief the workman is entitled to?"

2. The worker who is represented by General Secretary, Lal Bavia Koyla Kamgar Union filed a statement of claim at Exhibit-2'. Mahadeorao Madavi, the worker was appointed as ground loader on 18-5-1981. It was at New Majri Colliery of W. C. Ltd., Wani Area. His place of residence is Bhadravati which is about 20 KMS away from New Majri, the place of work. On 19-5-1984 he fell sick. He was unable to go Colliery dispensary for taking treatment due to long distance. His father was also sick. He send an application to the manager of Colliery informing his sickness and requested to grant leave for treatment at his residence.

3. On 18-6-1984 he received a chargesheet. He was charged under clause 18(I)(S) of the standing order for habitual late attendance and habitual absence without leave or without sufficient cause. He replied the chargesheet with a medical fitness certificate. He requested for withdrawal of the suspension and permission to join the duty. The manager informed him that he would be allowed to join the duty after completion of the inquiry. He was also asked to report everybody.

4. The worker pleaded that one Mr. N. C. Choudhary was appointed as the inquiry officer who issued a notice to him for attending the inquiry on 14-10-84 at 5.30 p.m. When he went there nobody was there. Thereafter nothing took place. The inquiry officer was changed and one Mehmood was appointed. An intimation to that effect was sent to the worker on 18-6-88.

5. On 16-8-88, Mehmood started the inquiry. It is averred that the chargesheet in the said inquiry is vague. It is pleaded that the inquiry officer played the role of representative of the management also. It is contended that no opportunity was given to the worker to represent properly in the inquiry proceeding. It is averred that the inquiry was against the Principles of Natural Justice. It is submitted that the findings of the inquiry officer are not proper.

6. The worker contended that on the basis of the inquiry report he was dismissed from service on 27-9-88. It is submitted that at no time he was paid the suspension allowance. He asserted that he is entitled to the suspension allowance as per the law.

7. The worker proved that under such circumstances the dismissal order be set aside. The management may be directed to reinstate in service with full back wages and continuity. He also prayed for granting of subsistence allowance with other reliefs.

8. The management resisted the claim by the Written Statement Exhibit-3'. It is pleaded that the reference is not tenable under the law. It is averred that no industrial dispute is contemplated under Section 2-K of the Industrial Disputes Act of 1947 exists between the workman in question and his union and the management. It is asserted that the union in question has no locus standi or is not competent to raise the dispute in question. It is averred that the claim of the worker is stale.

9. The management asserted that the domestic inquiry which was held against the workman was per the Principles of Natural Justice. He pleaded guilty to the charges levelled against him. Not only that the charges were also proved against him by the production of the muster roll. It is submitted that on its basis the inquiry officer submitted his report with logical findings. It is asserted that on its basis

disciplinary authority passed a proper order. It is submitted that at present the management is not in position to produce the payment and attendance record relating to the worker because the prescribed statutory period of preserving such a record is over. It is averred that the subsistence allowance is payable to the workman during his suspension pending inquiry against him and was duly paid in terms of the certified standing orders applicable to him. Had it not been so the workman could have made a complaint to the authorities as well as payment of wage authority for its recovery within limited period. It is submitted that he did not mention anything in respect of the same before the inquiry officer when the inquiry was conducted against him. For all these reasons it is submitted that the reference may be answered in favour of the management.

10. The workman filed a rejoinder at Exhibit-5. He reiterated the contention taken by him in the statement of claim and denied the submission made by the management.

11. My Learned Predecessor framed issues at Exhibit-4. It is ordered that issues Nos. 1 to 6 are to be tried as preliminary issue. The issues and my findings thereon are as follows :

ISSUES	FINDINGS
1. Whether the present Reference is tenable in law ?	Yes
2. Whether no "industrial dispute" as contemplated under Section 2(k) of the Industrial Disputes Act, 1947 existed/exists between the workman in question/his union and the management ?	The dispute exists
3. Whether the union in question has no locus standi/is not competent to raise the dispute in question ?	The union can raise a dispute
4. Whether the workman's claim is stale ?	No
5. Whether the inquiry held against the workman was not held properly and the rules of natural justice were not followed ?	No
6. Whether the Inquiry Officer worked as an Inquiry Officer, and also as a management representative ?	No

REASONS

12. Both the parties filed their written arguments in the matter. Mahadeorao Madave examined himself at Exhibit-20, and the management examined Mahmood Miya (Ex-22) the inquiry officer. They relied upon the documents on the record.

13. Referring to the order of reference it can be seen that the Government in exercising the powers under by clause (d) of sub-section (1) sub-section 2-A of Section 10 of the Industrial Disputes Act of 1947 had referred the dispute for adjudication. That itself goes to show that the dispute is under Section 2-A of the Act. There is no doubt that the dispute is not under Section 2-K of the Act.

14. Under the Industrial Disputes Act there are two different sections namely 2-A and 2-K under which the reference is made. So far as section 2-A of the Act is concerned it was introduced only in 1965. Under Section 2-K the dispute has to be of a general type concerning the worker in general. It is tried to argue that under Section 2-A the legal fiction was introduced and in that dispute relating to dismissal, discharge, termination, retrenchment can also be deemed to be industrial dispute where no other workman or any union is party to the dispute. It is not that such a dispute is to be raised by the worker himself. It is tried to argue that

the union is not allowed to raise such a dispute. I am not inclined to accept this submission. It appears that the present dispute was raised by the union before the Assistant Labour Commissioner who in turn send a negative report to the Ministry.

15. Whether the particular union is registered union or not is not the bar for espousing a dispute. It is tried to argue that there should be a authorisation for making representation in a particular matter by the union. Here in this case the worker had given the authority to the General Secretary of the union to represent the case. Under such circumstances there is nothing wrong in the General Secretary Mr. Pendare to represent the case of the worker.

16. The dispute which is referred to this Tribunal is in respect of dismissal of the worker in an industry. Under such circumstances the Tribunal which is established by the Central Government under the Act has jurisdiction to decide the matter. The reference is tenable under the law.

17. It can be seen that the worker was dismissed in the year 1988. Thereafter he approached the Assistant Labour Commissioner and the matter came to be referred to the Tribunal by the Government. In fact there is no law of limitation for sending a reference. Looking to the date of the dismissal there is nothing on the record to show that the worker was sitting idle and had not taken any steps for redressal. There appears to be no laches on his part. The claim of the worker cannot be said to be stale one.

18. It is tried to argue that the domestic inquiry which was held against the workman was against the principles of natural justice. This is denied by the management. Mahadeorao Madave in his cross examination admits execution of the documents which are at Exhibit-1 17/1, 4, 5, 6 and 16. They relate to the photo copy of Form 'B' in respect of Mahadeorao chargesheet, appointment of inquiry officer, inquiry notice and the complaint dated 19-4-91 of the union raising a dispute before the Assistant Labour Commissioner Chandrapur. He accepts to have signed the inquiry proceedings whenever he was present. The inquiry proceedings are at Exhibit-17/13.

19. Mahadeorao admits that he did not complain to the union or any officer regarding procedure of the inquiry. On page 2 of the inquiry proceedings it can be seen that the question was put to him whether he accepts the charges which are levelled against him for which he replied that he accepts the same. It can be seen that this proceeding is signed by him. That clearly goes to show that his admission of guilt is sufficient to hold him guilty under the charges. The matter does not stop there. The attendance register was produced before the inquiry officer. He perused and found that the worker was absent from duty as stated in the chargesheet. He had given his report Exhibit-17/14 which was approved by the Sub-Area Manager (Ex. 17/15).

20. Mahmood Miya (Exhibit-22) the inquiry officer affirmed that the inquiry was conducted in Hindi with the consent of the workman because he knew Hindi. He affirmed that the worker admitted the charges of his unauthorised, long and continuous absence from 19-5-84. He also admitted that for his absence he did not send any prior application in writing or verbal intimation to the management. He read over the proceedings and statements recorded in his presence and the worker admitted its correctness. From his cross-examination nothing has come on the record by which it can be said that the inquiry was against the principles of natural justice. It can be further seen that there is nothing on the record which can show that the inquiry officer was bias and was also acting as the representative of the management. The domestic inquiry which was held against the workman was proper and the rules of Natural Justice were followed. The inquiry officer did not work as the representative of the management. In the result I record my findings accordingly. Dated : 8-10-1996

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 नवम्बर, 1996

का० आ० 3420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के तन्त्र नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरूपित औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-96 को प्राप्त हुआ था।

[संख्या एल-41011/12/91-आई.आर.बी.-1)]

पी० जे० माईकल, डेस्क अधिकारी

New Delhi, the 13th November, 1996

S.O. 3420.—In pursuance of Section II of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the Industrial dispute between the employees in relation to the management of Paschim Rly, and their workman, which was received by the Central Government on the 14-11-96.

[No. L-41011/12/91-I RB II]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI P.R. DAVE, PRESIDING OFFICER
INDUSTRIAL TRIBUNAL CENTRAL, AHMEDABAD.

Reference (ITC) No. 64 of 1991

ADJUDICATION

BETWEEN

Western Railway, Bombay

First Party

AND

The Workmen employed under it.

Second Party

In the matter whether the demand of the P.R.K.P., Ahmedabad that the ten workmen, viz. S/Sh. Prakash Chand, U. Karsan Vala, Govind Lakha, Shamer Mehta, Laxman Jivaji, Moor Karsan, Kiran Arkhaji, Babu Arkhaji, Deva Ratna, Poonja Mitha should be granted temporary status and be engaged with open line with all consequential benefits is justified? If yes, what relief the concerned workmen are entitled to?

Appearances : Shri H.B. Shah, advocate for the first party.
Shri S.B. Nigam, representative for the second party.

AWARD

In exercise of the powers conferred u/s. 10(1) of the Industrial Disputes Act, 1947, the Desk Officer, Labour Ministry, Government of India, New Delhi vide his Order No. L-41011/12/91-I.R.(D.U.) dated 3-10-91 has referred an industrial dispute as stated in the Schedule of above order between the above parties for adjudication initially to the Industrial Tribunal of Shri V.H. Thakore and thereafter it was transferred to this Tribunal by an appropriate order of the Govt.

2. The second party has filed the statement of claim at Ex. 12 and prayed to direct the first party to pay scale rate of pay with arrears to concerned labours and also to give them temporary status after 360 days and their names should be interpolated in the seniority list for absorption with due benefits over their juniors. The case of the second party is that the persons mentioned in the reference were working over the Flood Organisation of the Western Railway under the control of Divisional Railway Manager, Rajkot with their

place of work at Bridge No. 95 near Jadar Railway Station of Rajkot Division; that they were initially engaged in June, 1980 and some were engaged in 1983/1984 and they were kept on job till the work of Bridge Gauging continued i.e. June to September of the year; that they were discontinued by the Railway for want of work and the Railway failed to give them other jobs though many projects were in progress; that these casual labours has approached the Divisional Railway Manager (Establishment) Rajkot, but till date nothing is done; that the Divisional Railway Manager, Rajkot failed to give job after the monsoon season and that period be accounted as if on duty and the labours be granted temporary status just after 360 days from their date of appointment and higher rate of pay (Scale Rate) be given the day they have completed 180 days; that the Divisional Railway Manager, Rajkot has agreed for grant of temporary status, etc. But they failed to do so, even they overlooked the instructions given by the General Manager (E) Bombay vide No. 1082/512 of 26-2-87 for granting them temporary status and hence this reference.

3. The first party No. 2 has filed the written statement at Ex. 16 and stated that the persons mentioned in the reference were engaged by Flood Organisation which was under the direct control of Chief Engineer (B&F) Churchgate and not under the control of Divisional Railway Manager; that their engagement was on seasonal basis for river gauging work during the monsoon season as per the requirement as would be seen from the statement annexed; that they were last engaged during the monsoon season 1985. Thus, it is clear that they were used to be engaged for seasonal work and after 1985 the need for their engagement did not arise; that there are no rules to grant scale rate/temporary status to such seasonal labours of Engineering Department. However, there are rules laid down by the Railway Board in the case of seasonal casual labours engaged as waterman during summer season in Traffic Department, copy of which is annexed, yet their case has been examined in terms of the Railway Board's letter dtd. 25-1-85 as applicable to the hot weather waterman of Traffic Department also. However, none of them is having the requisite number of 120 days continuous working as applicable to open line and 360 days continuous working as applicable to Project labours in the monsoon season of 1985 and in view of this position, the reference is not justified.

4. In support of their claim, both the parties have produced some letters and the first party has produced the abstract of details regarding attendance of the concerned workman. Moreover, the judgment of the Hon. Supreme Court of India in the case of Inder Pal Yadav & Ors. V. Union of India & Ors. is also produced, in which the scheme advanced by the Railway in respect of casual labour is produced. One judgment of Central Administrative Tribunal is also produced in which several workmen are petitioners against Union of India (Western Railway). However, it is found that both the parties have not followed proper procedure to prove the letters or documents produced before the Tribunal. However, these letters are not disputed and both the parties have declared that they do not want to lead any oral evidence and the matter was finally heard.

5. Shri Nigam for the second party vehemently submitted that the concerned casual labours engaged in 1980 have already worked upto 1985 and thereafter as per guidelines of the Honourable Supreme Court, they should have been given temporary status and benefits connected to it. Shri Nigam submitted that the period during which these workmen kept jobless should be considered for continuity of service to advance the benefits as per the scheme in the case of Inder Pal Yadav.

6. Shri Shah for the first party submitted that temporary status demanded for all benefits and there are two kinds of work i. e. non project work and project work. As per Shri Shah, in non project work, there is regular service on open line in which regular recruitments are made, while in project work, there is guideline to engage the workman as per requirements and they may be seasonal as they were engaged on seasonal work and naturally, on completion of season they are discharged. Shri Shah disputed that the Divisional Railway Manager is not controlling authority in this case as Chief Engineers is the employer as per Railway Rule 2(j). Shri Shah further contended that the concerned workmen have not completed the days required to get benefit as per Annexure with Ex.16 and Annexure-II with guidelines/rules of casual Labour. Shri Shah submitted that river gauging is project work and there are statutory rules to give temporary status of project labour or non project labour and the circulars and rules for casual labour cannot be applicable to seasonal labour also and there is no evidence of continuous work or service and they cannot demand the benefit as a matter of right. Shri Shah further submitted that these labours have not completed 1885 days within five years as per requirement. Shri Shah cited 1994, Lab. I.C. 359, (S.C.)

7. Replying to the arguments of Shri Shah, Shri Nigam stated that it was a submission that these labours are project labour and, therefore, benefits available to project labour should be given to these workmen and as per submission of Shri Nigam, the circular applying to watermen is not applicable to the case of project labour. As per rule for project labour the period of unemployment in between two employments was to be considered continuous as in river gauging project work there are statutory rules and circulars which should be followed.

8. In this matter, the basic facts are admitted by both the parties. However, when the arguments are advanced on perusal of the pleadings and in view of submissions of the parties, it is found that the concerned workmen of second party are project casual labours. Shri Shah for the first party contended that their work was of seasonal nature. But it is admitted that these persons were engaged for bridge gauging and their work was classified as project work as it appears by letter dtd. 20-4-88 of Chief Engineer, Ex.26. The exact words are "With reference to your letter above quoted it is to state that it has already been informed vide this office letter No. SPL/RET/1(Dup) dtd. 17-6-86 that flood gauging work is classified as "Project Work" as such the labour engaged for this work will be entitled for scale rate". Further letter of Railway Board No. E(NG)II/84/CL/41 dtd.11-9-86 reveals that as per the order of Honourable Supreme Court in the case of Inder Pal Yadav & Ors. etc. v/s. Union of India & Ors., the Supreme Court has approved the scheme and as per that scheme the project casual labours were to be treated as temporary on completion of 360 days of continuous employment. It is provide in the same letter in para-3 that as per scheme para 5.1 (a) (ii), Casual labour on projects, who though not in service on 1.1.81, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1-1-81 they will be treated as temporary by conferring temporary status from 1-1-86 or the date on which 360 days are completed whichever is later. Therefore, the position is very clear in the matter. Admittedly, the concerned workmen were engaged over the flood organisation at bridge No. 95 near Jadar Railway Station of Rajkot Division initially in June,

1981 and some were engaged in 1983-84 and thereafter their services were discontinued for want of work. The second party has not stated in pleading or in evidence how many days the concerned workmen worked. But the details of their working period are produced by the first party with reply at Ex.16 as Annexure and the same is not challenged by the second party. It is found from this Annexure that after 1980, these persons have worked in 1981, 1982, 1983, 1984 & 1985 and total days are more than 360 in case of 7 workmen out of 10. Moor Karsan, Deva Ratna & Poonja Mitha have not completed 360 days. It is also found from this letter that if these workmen were discharged and thereafter re-employed the period would be considered continuous for the purpose of application of these provisions. Railway Board's letter dtd.11-9-96 above number contains on page 5, Clause 5.2.3 which provides for preparation of seniority list. It is stated in this letter that "the seniority list of project casual labour engaged by project organisations will be recast by the Zonal/Construction Railway Administrations in the aforesaid manner as on the 1st April, 1985 to cover all project casual labour who have been in employment at any time from 1-1-81, onwards. The list so prepared will be used any for subsequent engagement/re-engagement/discharge of project casual labour. Any such discharge, where so warranted, due to reduction or completion of work or for other administrative reasons will be affected after complying with the relevant provisions of the Industrial Disputes Act, 1947. Therefore, it is clear that these project labour are now to be treated as temporary by giving temporary status and scale on their completion of 360 days if they were in service before 1-1-81 and thereafter they were discharged and were re-employed, the previous scale of service as casual labour is to be reckoned as continuous with the subsequent scale of service as classified in Board's letter. In view of the situation the 7 concerned workmen of second party, named S/Sh. Prakashchand U., Karsan Vala, Govind Lakha, Shamer Mehta, Laxman Jivaji, Kiran Arkhaji & Babu Arkhaji are entitled to the benefits as per the claim of the second Party from the date they completed 360 days and reference deserves to be allowed in their respect, but in case of Moor Karsan, Deva Ratna & Poonja Mitha, the reference deserves to be dismissed as they have not completed 360 days as per the record of the case. Again, it is pertinent to note that the second party has not bothered to produce or prove their claim of having completed 360 days. But it is the details produced by the first party in the interest of justice which is relied on by this Tribunal.

9. In view of above stated reasons, I pass the following order :—

O R D E R

The reference is partly allowed. The first party is directed to give temporary status and scale rate of pay with arrears to undermentioned concerned workmen from the date they completed 360 days with all consequential benefits.:

1. S/Sh. Prakash Chand U.
2. „ Karsan Vala
3. „ Govind Lakha
4. „ Shamer Mehta
5. „ Laxman Jiveji
6. „ Karan Arkhaji &
7. „ Babu Arkhaji.

The reference is rejected in respect of undermentioned workmen.

1. S/Sh. Moor Karsan
2. „ Deva Ratna &
3. „ Poonja Mitha.

The order is to be implemented within one month from the date of publication of this award. The first party is also directed to pay the second party Rs 1,000/- towards the cost of this reference.

SECRETARY P. R. DAVE, Presiding Officer
Ahmedabad, 24th October, 1996

नई दिल्ली, 15 नवम्बर, 1996

का०आ० 3421 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मं, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-96 को प्राप्त हुआ था।

[संख्या एन-12012/48/92-आई.आर. (बी.आई.)]

पी०जे० माईकल, डेस्क अधिकारी

New Delhi, the 15th November, 1996

S.O. 3421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.B.I. and their workmen, which was received by the Central Government on 14-11-1996.

[No. L-12012/48/92-IR (B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 45 of 1992

PARTIES :

Employers in relation to the management of State Bank of India

AND

Their workmen.

PRESENT :

Mr. Justice K. C. Jagadeb Roy, Presiding Officer.

APPEARANCE :

On behalf of Management—Mr. K. Ghosh, Law Officer of the Bank.

On behalf of Workmen—Mr. N. N. Bhattacharjee, Assistant General Secretary of the Union.

STATE : West Bengal

INDUSTRY : Banking

AWARD

By Order No. L-12012/48/92-IR (B-III) dated 20-7-1992 the Central Government in exercise of its powers under Section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of State Bank of India, in imposing the penalty of stoppage of two increments with cumulative effect of Shri B. N. Sengupta is justified? If not, to what relief the workman is entitled to?"

2. Both the parties filed their written statements, followed by a rejoinder of the workman. As per the pleadings of the parties, the following facts are admitted by both. The workman Shri B. N. Sengupta was a cashier of State Bank of India, Kanchrapara Branch (North 24 Parganas) who was chargesheeted for having committed certain misconducts namely, (a) he refused to pay on a passed cheque two minutes past 12 O'clock noon on 13-5-1986; (b) he snatched away the payment register from the Cash Officer and threatened him; (c) he used filthy and derogatory language to the Accountant and Cash Officer and (d) he refused to accept a memorandum contained in the sealed cover from the Peon of the Bank by endorsing in the peon-book "I am sorry to accept the sealed cover." This memorandum which was sent to him by the Bank was in sealed cover.

Neither party has filed the copy of the charge sheet in the case but the above mentioned charges are apparent from the pleadings and the report of the Enquiry Officer, which is marked Ext. W-1 in the case and admitted in the first paragraph of the written statement of the workman.

The domestic enquiry which followed the charge was held from 23 July 1987 and continued between 23 July 1987 to 23 February 1989 for a period of over about 20 months. Of these allegations, two charge namely, snatching of the register by the charged employee from the Cash Officer and using of abusive language were not proved while the rest had been proved. The workman took exception to the late entry of these allegations in the register maintained for recording of the allegations as it was not done on the date of the happening but on a subsequent date. He challenged the finding that he was guilty of refusing to accept the sealed cover on 22 October 1986 on the ground that the Presenting Officer had not dealt with the said matter in elaborate detail and the workman was accordingly victimised. It was his further allegation in the written statement that when he had signed the register for departure at 5 P.M. it was not possible that he had refused cash officer's request for rectifying the wrong figure at 5.10 P.M. as alleged. Accordingly, Mr. Sengupta the workman submitted for declaring this punishment illegal and unwarranted.

3. The management in their written statement had stated that because of the allegations, the disciplinary proceedings had been started and on its conclusion the punishment of stoppage of two future increments with cumulative effect was imposed on the workman in terms of paragraph 521(5d) of the Sastri Award read with Desai Award. The Bank had no bias in conducting the disciplinary proceeding and no principle of natural justice had been violated in the enquiry.

4. As was held in Indian Iron and Steel Company Limited, reported in 1958 (1) LLJ 260—AIR 1958 SC 130, the Tribunal was not clothed with power to interfere with the finding of the misconduct recorded in the domestic enquiry, unless one of the four conditions existed, such as (a) there was want of good-faith, (b) there was victimisation or unfair labour practice, (c) where the management had committed basic error of violation of principle of natural justice in holding the enquiry and (d) when on materials, the finding was baseless or perverse. In short, the conduct of disciplinary proceeding and punishment imposed therein were all considered to be managerial functions with which the Tribunal had no power to interfere, unless the finding was perverse or the punishment was harsh as to lead an inference of victimisation or unfair labour practice. This view had also been considered with approval by the Hon'ble Supreme Court in the workmen of Fire Stone Tyre and Rubber Company v. Management, reported in 1973 (1) LLJ 278.

5. In order that the workman can seek the Tribunal's interference with the punishment, it is for him to prove that there are materials for the Tribunal to find that one of these four conditions existed in the case. Most unfortunately, in the present case, the workman did not examine himself to say if there were any materials to impute lack of good-faith on the management or that some facts existed from where victimisation or unfair labour practice could be inferred or that the enquiry conducted in a manner which could reflect some basic error in the procedure in committing any violation of principle of natural justice. No evidence is also led to show that the findings of guilt were actually baseless and there was no materials on record to support them.

6. The workman had only examined one witness on 29-3-95 who was the Branch Manager of the Kanchrapara Branch of the State Bank of India during the period 1985 to 1987 when the occurrences happened in the office. In deed this witness explained away why the charges on which the workman was proceeded for were not recorded on 13-9-86 in the allegation register maintained by the Bank. According to him he was on leave on that date and the register was in his chamber. The 13th September 1986 being a Fridays and the two other immediate following days being Saturday and Sunday when the Bank was closed, the entries were made on Monday the 16th September, 1986. He stated that a letter of his in the form of a memo which he had sent to the charged employee in a sealed cover was refused by him and ultimately returned back to him. He also stated that on 23rd October 1986 when he was present in the office, he had heard quarrel Mr. Sengupta had picked up with the Cash Officer and heard abusive words being used by Mr. Sengupta against the Cash Officer. This happened around 5 O'Clock in the afternoon. It is usual for the employees of the Bank, through they officially permitted to leave the office at 5 P.M. that they continue to be in the office for another 5 to 10 minutes thereafter. There is therefore nothing found from the evidence of this witness to support any of his contentions made in his defence.

Another witness was also examined on behalf of the workmen. His evidence does not render any help to the charge-sheeted employee. All that he stated is that Mr. Sengupta had been proceeded in a disciplinary proceeding.

7. The management had examined one witness who was the Branch Manager at Ichapur Branch. During September 1986 who was appointed by the then Regional Manager as the Enquiry Officer in the disciplinary proceeding against Mr. Sengupta. According to him, he allowed all opportunities to the chargesheeted employee concerned. The employee concerned appointed a defence counsel. He had examined the witness as produced and allowed opportunities to cross-examine them and later on filed his enquiry report before the disciplinary authority which is marked Ext. M-1. According to him, two charges were proved and there was delay in giving the enquiry report as he was transferred to Burdwan in between and the parties to the enquiry also asked for time. He was not guided by anyone in filing his report, though he had made some correction to the first report and rectified it. He had done so not at the instance of anybody.

8. I have already stated that the workman had not examined himself nor had stated before the Tribunal what was the nature of rectification made by the Enquiry Officer in his report and if anybody had persuaded the Enquiry Officer to do so. He also led no evidence to show opportunities were denied to the workman to present his defence case properly.

9. In such view of the matter, I have no doubt in holding that the workman had utterly failed to prove any of the four conditions for the Tribunal to interfere with the punishment. Accordingly, I hold that the punishment of imposing penalty of stoppage of two increments with cumulative effect as stated in the schedule is justified.

The reference is answered accordingly.

Dated, Calcutta,

The 1st October, 1996

K. C. JAGADEB ROY, Presiding Officer

नई दिल्ली, 15 नवम्बर, 1996

का०आ० 3422 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निषिद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-96 को प्राप्त हुआ था।

[संख्या एन-12012/322/88-आई.आर.बी.आई.]

पी०जे० मार्टिनल, डेस्क अधिकारी

New Delhi the 15th November, 1996

S.O. 3422.—In pursuance of Section 17 of Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SBI and their workman, which was received by the Central Government on the 14-11-96

[No. L-12012/322/88-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA; PRESIDING OFFICER CENTRAL GOVT. INDUSTRIAL TRIBUNAL NEW DELHI

I.D.NO.117/88

In the matter of dispute between:

Shri N.K.Sharma, Teller through

The General Secretary, State Bank of India Staff Congress, H. NO. 41, Mohalla Brahmna, Pinjore.

Versus

The Deputy General Manager, State Bank of India, Chandigarh.

APPEARANCES: Workman in person.

Shri R.C. Chopra for the Management.

AWARD

The Central Government in the Ministry of Labour vide its order No. L-22012(322)/88-D.II(A) dated 16.8.88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of State Bank of India, Regional Officer, Haryana and U.T. in Transferring Shri N.K. Sharma, Teller at their Sector 7 branch to Patoda (Haryana) is legal and justified? If not to what relief is the concerned workman entitled?"

2. The case of the workman according to the statement of claim was that the joined service of the bank as Cashier at Balia branch of the bank in erstwhile Kanpur Circle in the year 1976. Thereafter he was transferred to Industrial Estate Chandigarh branch and subsequently to Sector 23 branch. He was promoted as Teller and transferred to Sector 7 Chandigarh Branch in February, 86 by virtue of his seniority. The workman in addition to his duties in the bank indulged into the active trade union activities and joined SBI Staff Congress at the time of its formation in 84. The said union was not recognised by the bank and the management had strong exception to the formation of this Union. As a reaction to the formation of union the management firstly transferred the President General Secretary and other principal office-bearers locally in Chandigarh. Shri N.K.sharma was ignored for the post of Teller despite the fact that he was at No. 3 in the seniority list. His promotion was released only after he represented to the Regional Manager.

3. The Management with a view to promote only one Union did not allow the office bearers of the State Bank of India Staff Congress any discussion even on individual issues. Rather they did not enter into any discussion before the

Assistant Labour Commissioner when the disputes were raised by S.B.I. Staff Congress. The Management thus started violating the provisions of para 517 of the Sastry Award and also the provisions of 4th Bipartite settlement. The workman was chargesheeted by the bank in the month of May, 1986 only because he represented the case of Mr. Munishwar and the rival union secretary created a disorderly scene and the management took sides with the rival union. Even at that time they tried to manipulate the transfer of the workman which could not be done due to the strike notice of the Union.

4. The Management after the recording the failure of the violation of Conciliation and even when the enquiry proceedings in the matter of charge sheet were in progress decided to transfer the workman. He being a General Secretary of the registered Trade Union could not be transferred without issuing notice as required in terms of para 535 of the Sastry Award but the management deliberately violated these provisions. The workman was declared protracted workman as advised by the Union to the Management every year. With a view to victimise the workman for his trade union activities the branch manager of Sector VII Chandigarh Branch decided to close 2nd counter of the Teller for in the Personal Banking Division thereby over-loading Shri Sharma the workman with work and also creating unnecessary/inconvenience so that to draw public complaints. The management was also sore because of the progress made by the Union at Sector VII, Chandigarh Branch after the posting of the workman where the membership of the staff congress considerable increase to 50%. The transfer policy in the bank is regulated by sastry Award read with subsequent decisions of the joint consultation committees held at circle level and at Central office Labour. As per the policy guidelines laid down from time to time an employee against whom the disciplinary action is pending cannot be subjected to transfer but the present workman has been transferred only with a motive not to permit him the proper opportunity for his defence in the preliminary enquiry.

5. On 5th March, 1986 while the workman was sitting in the Departmental Enquiry the Jamadar of the branch come with Peon Book to delivered a sealed envelope which when opened was found empty. Accordingly a note was made in the peon book by the workman. Having sensed some mischief the Union immediately served a notice of strike against the contemplated move because it was a reasonably believed that the envelop was kept empty only to show that the notice as required under para 535 was to be evaded. On receipt of the strike notice the management advise the Assistant Labour Commissioner that they had conveyed the order of transfer whereas there was nothing in the envelope and the transfer could be materialised only after ascertaining a formation that there is no relative of the employee posted at the transferee branch.

6. The workman was never given relieving chit nor any confirmation was sought from the employee in regard to the relations at the transferee branch. He was on leave on 7-3-1988 and when he reported for duty on 8th March, he was not permitted to join the duty and a note was given on the attendance register that he had been transferred to Pataudi. There was no branch at Pataudi and there was no exigency of expediency at the transferee branch since there was no post of Teller vacant at pataudi or patauda and the number of vouchers as admitted by the Management during the conciliation proceedings was between 15 to 20 whereas required number for appointment of Teller was 100 or 150. The transfer of the workman was liable to be set aside on the following grounds.

“(i) The workman had not been relieved, as such the transfer order is not said to have been affected till date.

(vii) The mandatory provisions of para 535 of Sastry Award have been violated since no notice was as is required in that para.

(iii) The transfer is violative of the Transfer Policy as laid down in the 15th Joint Consultation Committee Meeting's decision in regard to the transfer of a wokman from one branch to another.

(vi) That a Teller which is in cadre promotion, cannot be subjected to transfer outside the City where he has been promoted as per the seniority of that place.

(v) Since the disciplinary proceedings were in progress against the workman, the transfer was aimed at not providing a proper opportunity to the workman for defence in the departmental enquiry.

(vi) There was no exigency or expediency or service and the impugned transfer is clearly a colourable exercise of power with a view to effect the Trade Union functioning of State Bank of India Staff Congress.

(vii) That the transfer in the instant case is an act of unfair labour practice as decided in Vth Schedule attached to I. D. Act, 1947 at item No. 1 and 7.”

It is prayed that the order/action of the Deputy General Manager, State Bank of India in transferring the workman from Sector VII Chandigarh to Patauda was illegal, unjustified and mala fide victimisation unfair labour practice and colourful power exercise of power and deserve to be cancelled.

7. The management in its reply alleged that the dispute preferred does not fall within the definition of the term Industrial Dispute. It was an individual dispute and would not fall within the definition of the term Industrial dispute as contemplated within section 2(k) of the I.D. Act. The mere transfer from one place to another made in accordance with law and keeping in view the administrative exigencies does not give rise to any cause of action. It was further alleged in the written statement that since the alleged union was not recognised association so any act of the workman of taking part in different Trade Union activities did not arise. There was no violation of any provisions of the Sastry Award nor of the Bipartite Settlements with regard to the policy of transfers. The workman was transferred on account of administrative exigencies and the transfer of work of an employee from one office to another or from one post to another does not involve change of service conditions. The paragraph 535 of the Sastry Award does not apply to the case in hand because it applies in cases of President, Vice President or Secretary of the Registered Bank Employees Union and the workman was a Deputy General Secretary only. The extra counter of the Teller was provided in Sector VII branch from 1st of the month to 10th of the month as there used to be extra rush of the work upto 10th of month. Only one teller counter was in operation. This was the practice which was current when the workman was working at Sector 7 branch and was being followed even now. The averments that the one Teller counter was closed with a view to create more work for Shri N. K. Sharma was absolutely incorrect. The transfer of the workman was according to law and no illegality was committed by the management. The workman has not suffered any loss due to his transfer and there was no question of any unfair Labour Practice committed by the management in this case.

8. The management examined Shri Tara Chand Steno MW1, Shri S. K. Sharma MW2 while the workman himself appeared as WW1. I have heard the representatives for the parties and have gone through the record.

9. The Management representative has alleged that the action of the management in transferring the workman was fully justified and was not based on any victimisation of the workman due to his trade union activities. The alleged union was not recognised union by the bank and the question of his being victimised did not arise. Moreover there was no resolution passed by the members of the said Union to espouse cause and the workman himself had admitted that no written resolution was passed and there was only a verbal resolution. The workman was himself not the President, Vice President or the Secretary of the said Union. The workman was delivered transfer orders on 5th March, 1988 as proved by Tara Chand MW1. The Management has further referred to AIR 1958 SC 353 AIR 1975 SC 532 in support of the fact that the present dispute was not an Industrial Dispute within the definition of section 2(k) of the I.D. Act.

10. The Management further contended that the action of the management in transferring was legal and justified and in this regard he has referred to 1989 SLR 593 1986 KLT 32. The transfer of an employee was prerogative of the management and any transfer so made was a matter of accommodation to be made by the administrative authorities concerned. Normal rule was that the courts were not to interfere in the transfer matters. The Management has also filed affidavit stating therein that the transfer was not made due to any illwill or suppress the activities of the workman. Mere allegation that the order of transfer was mala fide was not sufficient for calling for interference by any court. No motive has been alleged against any individual for his being vindictive to the workman for any definite act committed by him. The management representative has thus urged that there is no ground to interfere in the order of transfer and the workman claim was not justified at all.

11. The workman representative on the other hand has alleged and reiterated all those points which he stated in the statement of claim and has also urged that the action of the management was not justified and his transfer was only vindictive. In support of his case he has referred to :

- (i) N. N. Sinha v. General Manager 1973 (II) SLR 1153
- (ii) Bhiwandi & Nizampur Municipality v. A. S. Works AIR 1975 SC 529
- (iii) Prakash Chandra Saxena v. State of M.P. & others 1990(1) SLR 788
- (v) C. Ramanathan v. ASM FCI 1980 (1) SLR 309
- Smt. Pushpika v. State of West Bengal 1972 SLR 910
- (vi) N. N. Singh v. G. M. Chitranian Locomotive works 1973 (1) SLR 1153 Calcutta HC.

12. After having gone through the points urged by the representatives for the parties I am of the considered opinion that there is nothing on the record to conclude that there was no vindictiveness on the part of the management in transferring Shri N. K. Sharma workman from his place of posting to Patandu. The Management according to 1989 SLR 593 was fully justified because the same was based on administrative grounds. The transfer of an employee was the prerogative of the management and no mala fide could be smelted in a original order of transfer of an employee who had continued on one post for a pretty long time. In this regard I could like to refer to 1990 ISJ (Banking) 368 in which it was held as follows :—

"Transfer in a Government Service is an ordinary concomitant and incident of service. an employee who is appointed in a particular cadre of transferable posts his transfer from one place to another is an ordinary incident of service and it does not result in alteration of any conditions of service to his disadvantage. The transfer is a normal feature in service and no one has a right to remain at a particular post or for a particular period. The norms or the policy is for the guidance of the Officers authorised to effect and regulate the transfers. Immunity against transfers would amount to negating the right of the administration to administer and right of the employer to get work at the time and place of his choice and according to the administra-

tive exigencies the employer, which he wants to meet.

We are of the opinion that the only conclusion which can be drawn is that the employer has a right to transfer and normally an employee with a stay for five years at a particular Branch/Office is liable to be transferred and there is no restriction imposed on the employer either by the Sastri Award of the guidelines, dated June 11, 1988. Thus, no fault can be found with the view taken by the learned Single Judge and in our opinion that is the only view possible in the facts and circumstances of this case."

Simply because some averments are made in the onex and the order of transfer is levelled as discriminatory and/or as actuated by mala fides, it does not become discriminatory or cannot be said to have been passed on account of mala fides. To make out a case for interference for a matter of records there should be concrete material which should be unimpeachable in character. It was so held in 1989 SLR page 593 and the workman in this case has not been able to produce concrete material which could be unimpeachable in character. No special ground of vindictiveness has been established in this case by the workman and in the absence of any such evidence it is not possible to draw conclusion of vindictiveness against him on the part of the management. From the statements of the witnesses produced by the parties in this case and on the basis of the points urged before me I am of the opinion that the order of transfer of the workman does not call for any interference by this Tribunal.

14. It has been held in many cases by the different High Courts that the Court should not go into the technicalities of the matter and the Hon'ble Supreme Court in Workmen of Hindustan Lever Ltd. Vs. Hind LLI SC 391 (1984) disprove the practice of raising frivolous preliminary objections at the instance of the employer to deal and feel by accusing the workman out of the dispute. I, therefore, without going into the legalities of the objections regarding the dispute being an Industrial Dispute have come to the conclusion that the action of the management was fully justified and the workman was not entitled to any relief. Parties shall, however, bear their own costs.

Dated : 23rd September, 1996

GANPATI SHARMA, Presiding Officer

Further it is ordered that the requisite number of copies of this award may be forwarded to the Central Government for necessary action at their end.

नई दिल्ली, 15 नवम्बर, 1996

का०आ० 3423 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबन्धतंत्र के संबद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई नं०-1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-96 को प्राप्त हुआ था।

[संख्या एल-41015/1/96-आई.आर.बी.आई.]

पी०जे० माईकल, डेस्क अधिकारी

New Delhi, the 15th November, 1996

S.O. 3423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai No.-1 as shown in the Annexure, in the industrial dispute between the employers in relation to the manage-

ment of Western Rly, and their workman, which was received by the Central Government on the 14-11-96.

[No. L 4/015/1/96-IR B-1]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice R. S. Verma, Presiding Officer.

Reference No. CGIT-1/5 of 1996

PARTIES :

Employers in relation to the management of General Manager, Western Railway, Bombay.

AND

Their workmen

APPEARANCES:

For the Management.—Shri V. Narayanan, Advocate.

For the Workman—Shri H. J. Acharya, Advocate.

STATE : Maharashtra.

Mumbai, dated the 11th day of October, 1996

AWARD

Appropriate Government, under the directions of the Bombay Bench of the Central Administrative Tribunal has referred the following dispute for adjudication of this Tribunal :

“Whether the Truck Drivers working at Parel Workshop are entitled to get T.A. for duty performed by Road way from Lower Parel to Churchgate/Budwarpa? If so, to what relief is the workmen entitled?”

2 Briefly stated the case of the Motor Lorry Drivers (MLD) of the Western Railway, as put through their union, the Paschim Railway Karmachari Parishad (P.R.K.P) is that the MLDs attached to Parel Workshop are required to travel on duty to Churchgate and Cuff Parade. The distance between Parel Workshop and Churchgate is more than 8 kilometres. Likewise distance between the said workshop and Cuff parade is also more than 8 kilometres. The MLDs are required to travel by road to the said two destinations on duty and under relevant rules were entitled to payment of travelling allowance. However, since no travelling allowance was being paid to them, they represented the matter before the management. Senior Divisional Personnel Officer Railways who examined the issue and by communication Annexure I dated 12-9-89 stated as follows :

“He has been represented to this office that M/L Drivers working under you are denied T.A. payment for their journey from MX (m/w) to BDP/Colaba etc. This issue has been

examined and it is stated that the distance between MX (m/w) and BDP/Colaba is 8.5 kms. as per Survey Map No. 47.1313.

In view of the above M.L. Drivers and other staff are entitled for the payment of T.A. if they are deputed to work in this area.

You are therefore directed to examine their duties and arrange the payment of T.A. claims to the employees through salary bills if they are due.

Sd/-

Sr. D.P.O., B.C.T.”

By this letter, he directed the CTRI Mahalaxmi to examine the T.A. claims of M.L.Ds and arrange payments of the same. However, nothing came out of this communication and hence the P.R.K.P. took up the dispute in conciliation and on 01-8-90, both the parties agreed to make a joint reference to this Tribunal under Section 10(A) of the Industrial Disputes Act in the following terms :

“Whether the Truck Drivers working under CTCI at Parel Workshop are entitled to get T.A. for duty performed by Road way from Lower Parel to Churchgate/Budwarpa?”

3. It appears that inspite of this agreement, a joint reference could not be made. However, by his letter dated 01-8-91 (Ann. 3) the Divisional Manager, Western Railway (E) advised the CTRI and others to forward the T.A. claims of MLDs for arranging the payment. A copy of this letter was sent to P.R.P.K. by the conciliation officer and in view of this letter the P.R.K.P. treated the dispute as settled and did not pursue the matter.

4. It appears that meanwhile the matter was examined at different levels in the Railway Administration and the Railway Board issued a letter Annexure 5, interalia stating that the MLDs were not entitled to any travelling allowance. This letter deserves to be quoted in extenso. It reads as follows :

“Government of India|Bharat Sarkar
Ministry of Railways|Rail Mantralaya
(Railway Board)

No. P(E)I/92/AL-28/14

New Delhi, dt. 18-3-93

The General Manager(P)
Western Railway,
Bombay.

Sub:—Non-payment of TA to Truck Drivers travelling between Parel and Budhwar Park-BCT Division, Western Railway.

Please refer to your letter No. B(P&A)95/38(L) dt. 2-4-92 on the above subject.

2. It is clarified that payment of Daily Allowance to the Motor Lorry Drivers for the journeys performed on duty between Parel and Budhwar Park may be re-

gulated in terms of Note (2) below Rule 1630 B.II (1987 Edn.) Since the distance between Parel and Churchgate Railway Station (which serves Badhwar Park) is less than 8 kms. the Motor Lorry Drivers are not entitled to any Daily Allowance.

3. Please acknowledge receipt.

P. K. PURI, Dy. Director Finance (Estt)
Railway Board."

5. In view of this letter, the management stopped payment of T.A. to MLDs and recovery of payments already made was also directed. Certain workmen then approached the Bombay Bench of the Central Administrative Tribunal which eventually directed the appropriate Government to refer the dispute for adjudication. This is how the Central Government made the present reference.

6. The case of PRKP is that the distance between Parel Workshop and Churchgate is more than 8.5 kms. Cuff Parade is further away and distance between Parel workshop is also more than 8.5 km. MLDs have to travel this distance while on duty and under relevant rules are entitled to travelling allowance while performing the said journey. Upon such premises, they have claimed inter alia following reliefs:

"1. The payments of T.A. made under the DRM (E) letter dt. 1-8-91 be held not recoverable.

2. The payments of Travelling allowance for May, 1993 onwards with 18 p.c. interest from the date of accrual to the date of payment.

3. The Railway Board's letter dt. 18-3-1993, and the Sr. Divl. Personnel Officer's order dt. 24-12-1993, be set aside/quashed."

7. The case of the management is that the distance between Parel and Churchgate and Parel and Cuff Parade is less than eight kilometres, the MLDs are not entitled to any T.A. As regards payments made on account of T.A., it was submitted that recoveries were ordered in pursuance of the Railway Board's order. Payments were also stopped under the said order. It was reiterated that the distance between Parel and Cuff Parade was less 8 kms. Likewise distance between Parel & Churchgate was less than 8 kms.

8. It may be stated that parties have not led any oral evidence and have placed documentary evidence in support of their respective contentions. I have heard the learned counsel for both the sides and have perused the record carefully.

9. Before, I deal with the contentions advanced before me, I would like to state that the grant of travelling allowance is covered by Rules, 1601 to 1700 of the Railway Establishment code which fall under Chapter 16 of the code. All the rules of this chapter are, however, not germane for deciding the dispute. Rule 1608 of the code lays down as follows :

"1608.—The point in any station at which journey is held to commence or end is the railway station provided that a journey on transfer shall be held to begin and end an actual residence of the railway servant concerned."

Since, I am not concerned with travelling allowance on transfer, the proviso to this rule is not relevant and what is relevant is the main rule itself. However, the main rule has been interpreted and clarified by the Government and following Government decisions incorporated as notes to the rule are relevant for adjudicating this dispute. Relevant portions of decisions (5) are as follows :

"(5) For determining the 'duty point' the following provisions may be observed :—

(i) Duty point at the headquarters will mean the place or office where a railway servant remains on duty i.e. the place/office of employment at the Head Quarters.

(ii) (Not relevant)

(iii) The General Manager may fix 'duty point' at the Zonal Head Quarters Office in consultation with FA & CAO and if necessary they may also consult the Accountant General, head quartered at the Zonal Head Quarters of the Railway. The 'duty point' may also be fixed for the Divisional Head Quarters and other offices by the General Manager in accordance with the above guide lines.

(iv) Road mileage will be admissible only when the Government vehicles is not provided when a railway servant is proceeding on tour/duty."

10. A bare perusal of the rule and the Government decisions would go to show that a 'duty point' would mean the place or office when a railway servant remains on duty i.e. the place/office of employment at the Head Quarters. The General Manager or Divisional Head Quarters may also fix different duty points but the fixing of such duty points could arise only when the duty points are not ascertainable with reference to decision No. 1. In the present case, the first duty point of the MLDs is the Parel workshop, which is their normal place of office and the second duty point is either Churchgate or Badhwar Park.

11. The next rule, which is germane for adjudicating this dispute is Rule 1614 of the code which reads as follows:

"1614. (1) Daily allowance may be drawn by a railway servant who is not in receipt of a permanent travelling allowance on any day on which he proceeds on tour beyond a radius of 8 kms. from his headquarter or returns to his headquarter from a similar distance.

(2) Daily allowance as in sub-rule (1) would be admissible even if the place of temporary duty falls in the same municipality as (or in a municipality contiguous to) that

in which the railway servant's Headquarter is situated and the term 'radius of 8 kms.' should be interpreted as meaning a distance of 8 km. by the shortest practicable route by which a traveller can reach his destination by the ordinary modes of travelling.

(3) The headquarters of a railway servant belonging to the category of gangmen, keymen and mates, for the purpose of Daily Allowance should be the hut or the place where the tool box is kept.

The next rule, which would be attracted is rule 1619 which reads as follows :

"1619. Except where otherwise expressly provided in these rules, a Railway servant not in receipt of permanent travelling allowance, draws travelling allowance for journeys on tour in the shape of daily allowance."

The other rule having a direct bearing on the dispute is rule 1630 which along with appropriate Government decisions reads as follows:

"1630. (1) When a railway servant makes a journey by road on tour, he is entitled to the following travelling allowances :—

(a) Road Mileage.—as prescribed in sub-rule (5) of Rule 1607.

(b) Daily allowance.—as prescribed in Rule 1607.

(c) Toll tax.—as prescribed in Rule 1640.

NOTE :—(1) When two or more railway servants travel in a conveyance belonging to one of them, the owner may draw travelling allowance as if he travelled along and the other railway servant or servants may draw daily allowance at the appropriate rates applicable to them.

(2) Where free transport is provided, only daily allowance will be admissible as if the journey is by railway.

(3) The road mileage allowance admissible for journey performed by sharing the hire charges or by taking a single seat in a taxi, scooter etc. will be the actual share of the hire charges limited to the amount calculated at half of the rates admissible for taxi/auto rickshaw in terms of Rule 1607.

(2) When a railway servant performs a journey by road between stations connected by rail, he may be granted travelling allowance as in sub-rule (1) above, if the Head of Department in the case of gazetted railway servant and Divisional Railway Manager in the case of non-gazetted railway servant is satisfied that the journey by road was necessary in the interest of railway service, such as saving

of public time or inspection of work enroute etc.

(3) Divisional Railway Managers may permit Gazetted Officers working under them to undertake journeys by road between stations connected by rail in the following types of cases—

(i) Journeys for surprise inspection of level crossing gates;

(ii) Journeys in connection with accidents and breaches;

(iii) Journeys for surprise checks at stations in the nature of raids by road against ticketless travel etc;

(iv) Surprise checks of station and staff with the safety aspect in view; and

(v) making arrangements concerning ticket checking by special squad.

(4) If the performance of journey by road is not in the interest of railway service, the railway servant concerned may be granted only such daily allowance as would have been admissible, had the journey been performed by rail."

12. Now, the first point to be adjudicated upon is if the distance between Parel workshop and Churchgate and between Parel workshop and Budhwar Park is more than eight kilometres. This is a question of fact. Both the sides have not chosen to lead any oral evidence and have confined their respective contentions on the basis of documentary evidence.

Annexure I filed by the union is an internal communication between Sr. D.P.O. Bombay Central and CTCI (M/W) MX. This document states the distance between (M/W) MX and FBP/Kolaba at 8.5 km. though it does not state the distance between (M/W) MX and Churchgate. This letter interalia states that MLDs were entitled to TA if 'they are deputed to work in that area' (BDP/Kolaba). Annexure 3 issued by DRM Bombay Central clarifies his position and reads :

"WESTERN RAILWAY

DRM's Office

No. F/PF/S&T/774/1 Bombay Central
dt. 01-08-1991.

To

The CBRI-PL, CSI(C)MT
DCTEI-MW-MX

Sub : Non-payment of T.A. to Truck Drivers of staff between Parel and Badhwar Park BCT Division.

Ref : GM(E) CCG's letter No. E(P&A) 95/38
(L) dated 3-5-1991.

With reference to the above, it is advised that ML-Drivers who works between Parel MX and Badhwar Park are eligible for payment of TA. Accordingly their TA claims may please be forwarded to this office for arranging payment.

For DRM(E) BCT"

Thus, it is evident that the distance between the workshop at Parel, which has been described as M/W(MX) and Budhwar Park/Kolaba is more than 8 kilometres.

13. Why the Railway Administration declined to grant the T.A. becomes clear from Annexure 5, which is a letter issued from Railway Board Delhi, Head Quarter to General Manager (P) Western Railway, Bombay. This letter reads as under :

"Government of India/Bharat Sarkar
Ministry of Railways/Rail Mantralaya
(Railway Board)

No. P(E)I/98/AL-28/14 New Delhi, dt. 18-3-1993.
The General Manager (P)
Western Railway
Bombay.

Sub : Non-payment of TA to Truck Drivers travelling between Parel and Budhwar Park-BCT Division, Western Railway.

Please refer to your letter No. F (P & A) 95/38(L) dt. 2-4-92 on the above subject.

2. It is clarified that payment of Daily allowances to the Motor Lorry Drivers for the journeys performed on duty between Parel and Badhwar Park may be regulated in terms of Note (2) below Rule 1630 R.II (1987 Edn.) Since the distance between Parel and Churchgate Railway Station (Which serves Badhwar Park) is less than 8 kms., the Motor Lorry Drivers are not entitled to any Daily Allowance.

3. Please acknowledge receipt.

(P.K. Puri)
Dy. Director Finance (Estt.)
Railway Board.

Copy to (i) The FA & CAO, Western Railway, Bombay.

(ii) The Director of Audit, Western Railway, Bombay.

(P.K. Puri)
Dy. Director Finance (Estt.)
Railway Board."

14. Now, a bare reading of the letter goes to show that it does not refute or demolish the case of the union that distance between Badhwar Park/Colaba

and Parel workshop was more than 8 kilometres but it proceeds to determine the distance as less than 8 kilometres between Parel Railway Station and Churchgate. In my opinion, by virtue of decision No. 5(1) under Rule 1608 of the code, the 'duty point' has to be reckoned from the place or office where a railway servant remains on duty, and not from the Railway Station.

The duty of MLD's in the present case does not commence at the Parel station and does not end at the Churchgate station but commences at his workshop and ends at Badhwar Park—Kolaba—both the duty points, not being a railway station. The Railway Board could not have arbitrarily declared the duty points of MLDs as Parel station and Churchgate stations.

15. Now, it may be seen as to what travelling allowance the MLDs are entitled to. Rule 1630 of the code stipulates three distinct components of the Travelling Allowance viz. (i) Road Mileage (ii) Daily Allowance and (iii) Toll Tax. Note (2) to this rule declares :

"(2) Where free transport is provided only daily allowance will be admissible as if the journey is by railway."

In the present case MLD's travel by the lorries/trucks to which they may be assigned. Thus, they get free transport and by virtue of the aforesaid decision, they are entitled to daily allowance, as if they perform journey by railway.

16. In light of the aforesaid discussion, I am of the view that the management was not right in disallowing T.A. claims of MLDs performing journey by road from Parel workshop to Budhwar Park and back. The management is directed to allow all the T.A. claims of the MLDs and pay arrears to them with interest @ 12% p.a. The management shall pay Rs. 3000 as costs to the union.

R. S. Verma Presiding Officer

नई दिल्ली, 15 नवम्बर, 1996

का०आ० 3424 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन रेयर अर्थ लिमि० के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-96 को प्राप्त हुआ था।

[सं० एस-43025/3/77-डी-III (वी)]
बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 15th November, 1996

SO 3424.—In pursuance of Section 11 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.-2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Rare Earths Ltd, Quilon and their workman, which was received by the Central Government on the 14-11-96.

[No. L-43025/3/77-D-III(B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2.

MUMBAI

PRESENT

SHRI S.B. PANSE

PRESIDING OFFICER

REFERENCE No. CGIT-2/16 of 1977

EMPLOYERS IN RELATION TO THE MANAGE-
MENT OF INDIAN RARE EARTH LIMITED

QUILON

V/s.

WORKMAN & Anr.

APPEARANCES :

FOR THE MANAGEMENT : No Appearance.

FOR THE WORKMEN : No Appearance.

MUMBAI, dated 28th October, 1996

AWARD

The Government of India, Ministry of Labour by its Order No. L-43025/3/77-DIII B dated 12th December, 1977 had referred to the following Industrial Dispute for adjudication.

"1. Whether the demand of the workmen engaged on mining work by Shri M.S. Panicker, Mineral sand supply contractor of M/s. Indian Rare Earths Ltd. Chavara for payment of wages for the period of non-employment from 3-4-77 onwards is justified. If so, to what reliefs they are entitled?

2. Whether the workmen employed by contractors of M/s. Indian Rare Earths Limited, Chavara are entitled to any Gratuity having regard to their system of employment. If so, what should be the gratuity scheme applicable to such workers and from what date?"

2. My Learned Predecessor disposed off the matter on preliminary point on 26-6-78. Thereafter the matter was taken up, to the Supreme Court in special appeal No. 2209 of 1978. Their Lordships granted the stay in the matter.

3. The office received a decree passed by Their Lordships on 12-12-95. They disposed off the matter in terms of the settlement before them. In view of the matter there is nothing remained to be answered in the reference. In the result I pass the following order :

ORDER

The reference is disposed off in view of the Supreme Court judgment passed in Special Appeal No. 2209 of 1978 as per the terms of the settlement.

28-10-96

S. B. PANSE, Presiding Officer

नई दिल्ली, 19 नवम्बर, 1996

कांआ० 3425 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबन्धतंत्र के सबख नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-96 को प्राप्त हुआ था।

[सं० एल-33012/6/91-आई०आर० (विविधि)]

बी०एम० डेविड, डेस्क अधिकारी

New Delhi, the 19th November, 1996

S.O. 3425.—In pursuance of Section 11 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, MADRAS as shown in the Annexure, in the industrial dispute between the employers in relation to the management of MADRAS PORT TRUST, MADRAS, and their workman, which was received by the Central Government on 19-11-1996.

[No. L-33012/6/91-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS.

Tuesday, the 27th day of August, 1996.

PRESENT :

THIRU S. THANGARAJ, B. Sc., L.L.B.
INDUSTRIAL TRIBUNAL.

INDUSTRIAL DISPUTE NO. 7 OF 1993.

(In the matter of the dispute for reference under adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Madras Port Trust, Madras).

BETWEEN

Shri S. Sigamani,
No. 14, Stanley Nagar,
6th Street, Madras-600 021.

AND

The Chairman,
Madras Port Trust,
Madras-600 001.

REFERENCE :

Order No. L-33012/6/91-IR (Misc.), dated 3-7-1992, Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 6th day of August, 1996 upon perusing the reference, claim and counter statements and all other material papers on record, and upon hearing the arguments of Tvl. R. Ganesan and R. Gowthaman, Advocates appearing for the workman and of Tvl. A. L. Somajai, R. Arumugam and B. Hari-babu, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

Government of India by its Order No. L-33012/6/91-IR (Misc.), dated 3-7-1992, Ministry of Labour, has referred for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 by this Tribunal the following issue :—

"Whether the action of the Management of Madras Port Trust, in terminating the services of Shri M. S. Sigamani, with effect from 8-3-1989 is justified ? If not to what relief he is entitled to ?"

2. On receipt of summons, parties appeared, and petitioner and respondent filed their claim statement and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows :

The petitioner's father by name Sundaram was working as a Mazdoor in Madras Port Trust and he died in harness in 1984. The petitioner was appointed as a casual worker in the traffic department of the Madras Port Trust on compassionate grounds on account of the death of his father Sundaram. On 7-3-1989, the management terminated the services of the petitioner w.e.f. 8-3-1989, for no reason on the ground that already his brother Shri Sampathkumar is working in Madras Port Trust. The termination of the services of the petitioner is illegal. Since his brother was not appointed on compassionate ground on the death of his father, the termination order passed by the respondent is not in

accordance with the rules. The failure on the part of the petitioner to mention his brother's appointment was neither wilful nor wanton. The termination of the service of the petitioner amounts to retrenchment and the mandatory provisions of Sec. 25-F of the I. D. Act, 1947 have not been followed. The order passed by the respondent is ab-initio void the petitioner is entitled to reinstatement of service with back wages and all other attendant benefits.

4. The main averments found in the counter filed by the respondent are as follows :—

The petitioner's father Shri M. Sundaram was employed as a Mazdoor in Electrical and Mechanical Department. The petitioner's brother Sampathkumar was selected as a full time apprentice as he was the son of a serving employee of the Port Trust and he was appointed as Assistant Technician. Sundaram died while he was in service on 18-9-1984, and at that time Sampathkumar was employed as Assistant Technician in the Electrical and Mechanical department. At the time of submitting his application for appointment on compassionate grounds, the petitioner deliberately failed to mention the fact of his brother's employment in the Madras Port Trust. The enrolment of the petitioner as a mazdoor was made subject to three conditions. (i) None of his brothers or sisters or any other members of his family should be under employment of the Port Trust, in any capacity or even as an apprentice. (ii) as any time after his enrolment if it is found that any of his brothers, sisters or any other members of his family is or had been in the employment of the Port Trust his service will be terminated. (iii) The enrolment was purely on temporary basis for a period of 6 months and it confers no right upon him as per the regulations applicable. One Devaiah had sent a petition on 3-10-88 stating that Sri Sampathkumar brother of the petitioner was already employed as Assistant Technician in the Electrical and Mechanical Department of the Madras Port Trust. On the basis of the petition, when the respondent made an enquiry it was found that the petitioner has deliberately suppressed the fact that his brother was employed in the Port Trust. The petitioners having made a false declaration cannot be continued in service and therefore, by an order dated 7-3-1989 the respondent terminated the services of the petitioner w.e.f. 8-3-1989. His brother is living separately with his family is not a valid reason to admit the appointment of the petitioner. The petition is devoid of merits and award may be passed dismissing the same.

5. One witness was examined on the side of the petitioner and Ex. W-1 to W-6 were marked. One witness was examined on the side of the respondent and Exs. M. 1 to M. 5 have been marked.

6. The point for our consideration is : Whether the action of the management of Madras Port Trust, in terminating the service of Shri M. S. Sigamani, with effect from 8-3-1989 is justified ? If not, to what relief he is entitled to ?

7. The point : Shri Sundaram was employed as Mazdoor in Madras Port Trust and he died in har-

ness in the year 18-9-1984. On the death of Shri Sundaram, his son the petitioner Shri Sigamani was enrolled as a Casual Shore Labour, the Madras Port Trust. He was enrolled as a Casual Shore Labour on 14-10-1988. The enrolment was made on compassionate grounds, the petitioner being the son of Shri Sundaram with his income will support the other family members of the deceased Sundaram. Sampathkumar was selected as a full time apprentice as he was the son of the serving employee Shri Sundaram and was appointed as Assistant Technician in the Electrical and Mechanical Department of the Madras Port Trust. The petitioner has failed to state the fact of his brother Sampathkumar's employment in the Madras Port Trust on his application seeking employment. One Devaiab has sent a petition to the Madras Port Trust, revealing these facts. The respondent made enquiry and found that the allegations found in the petition were true and there by terminated the services of the petitioner Sigamani Rank Casual No. 135 w.e.f. 8-3-1989, forenoon under Ex. M. 1. Against the said termination order passed by the respondent petitioner Sigamani has raised this industrial dispute. The order passed by the respondent dated 12-10-1988 for the enrolment of the petitioner as a casual worker is marked as Ex. M. 5. The enrolment has been subject to certain conditions. Among them condition number 1, 2 and 3 are relevant for the subject matter and those conditions have been stated in the counter also. Conditions 1 to 3 are as follows :

- “(i) None of his brothers or sisters or any other member of his family should be under employment of the Trust in any capacity or even as an apprentice. He should tender a written declaration to that effect in the prescribed proforma duly attested by a responsible person preferably a Gazetted Officer with his office seal fixed.
- (ii) If at any time after his enrolment it is found that any of his brothers, sisters or any other member of his family is or had been under the employment of the Trust in any capacity or as an apprentice, his services with the Trust will be terminated without assigning any reason.
- (iii) The enrolment is purely on a temporary basis for a period of six months and it confers no rights upon him as per the regulation applicable.”

As per condition no. 1, none of his brothers or sisters or any other member of his family should be under employment of the Madras Port Trust and the petitioner should tender a written declaration to that effect in the prescribed proforma duly attested by responsible person preferably a Gazetted Officer. Condition No. 2 says, that if any time after his enrolment it is found that any of his brothers, sisters or any other member of his family is or had been under the employment of the Port Trust his enrolment will be terminated without assigning

any reasons. Condition No. 3 speaks about the enrolment that it is purely on temporary basis for a period of 6 months and it confers no right upon him as per the regulations. The petitioner has not denied the appointment of his brother Shri Sampath Kumar in the Madras Port Trust while his father was in service. However, it is clear from condition number one that he had given a written declaration saying that none of his brothers or sisters or any other member of his family were employed in Madras Port Trust. It is clear that the petitioner has given a false declaration because he knew fairly well that his brother was employed in the Madras Port Trust, at the time of his enrolment as casual worker. The petitioner explained it by saying that his brother's appointment was not on compassionate grounds and that his brother is living with his family members and his income is not useful to the members of his deceased father's family i.e. himself, his mother and sister. Condition no. 1, clearly says that none of the family members of the deceased person should be employed in the Madras Port Trust to get an enrolment as casual worker in the Madras Port Trust. So, the distinction shown by the petitioner that his brother got his appointment not on compassionate grounds cannot be accepted as a valid reason. It is clear that he has given a declaration saying that none of his family members were working in the Port Trust at the time of his enrolment as casual worker. There is no specific explanation as far as this condition is concerned and the explanation that his brother had not got his appointment on compassionate ground cannot be taken as a valid explanation. To substantiate that his brother is living separately the petitioner has marked the copy of the ration card of his brother's family for the year 1993. In the claim statement he has admitted that his brother got the appointment on 6.1.83. The ration card Ex. W-6 has been issued for the year 1993, 10 years thereafter. His father died in the year 1984. So, his brother is living separately cannot be taken as a valid ground to substantiate the petitioner's failure to reveal the fact of his brother's employment at the Madras Port Trust at the time of his enrolment in 1988. Condition no. 11 says that at any time after his enrolment it is found that any of his family members are employed, his enrolment will be terminated without assigning any reasons. The respondent-management has followed these conditions. He was enrolled as a casual worker on 12.10.88 as per Ex. M.5, and he was terminated from service w.e.f. 8.3.89 by an order dated 7.3.89 marked as Ex.M.1. It is clear that within 6 months from the date of his enrolment, his services were terminated. Condition No. (iii) says his enrolment was purely on temporary basis for a period of 6 months and it confers no right upon

him as per the regulations of the Trust. So, the petitioner has clearly contravened condition nos. 1 to 3 stipulated in the order of his enrolment, as casual worker.

8. It was argued on the side of the petitioner that the termination was affected by the respondent-management without giving any opportunity to the worker concerned and also without following procedure. To substantiate this contention, the petitioner-workman has cited a decision of our Supreme Court in *D.K. YADAV Vs. JMA INDUSTRIES LTD.*, (1993 SCC P 259) wherein our Supreme Court has held

"Application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. No decision must be taken which will affect the right of any person without his/her first being informed of the case and giving him/her an opportunity of putting forward his/her case."

In the instant case, the termination of the services of the petitioner is a discharge simpliciter and the termination has been done in accordance with the contract of service. Our Supreme Court had occasions to deal with the difference between discharge simpliciter Vs. disguised dismissal. In *L. MICHAEL Vs. JOHNSON PUMPS LTD.* (1975 F. LLJ P 262 at 265), it was held:

"The Tribunal has the power and indeed, the duty to x-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ultimate purposes is to dismiss the employee because he is an evil to be eliminated. But, if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be set aside."

In *GUJARAT STEEL TUBES LTD., Vs. GUJARAT STEEL TUBES MAZDOOR SABHA* (1980 1 LLJ P 147 at 150) our Supreme Court has held

"The Court will find out from other proceedings of documents connected with the formal order of termination what the true ground for the termination is. If, thus, scrutinised, the order has a punitive flavour in course or consequences it is dismissal. If it falls short of this test, it cannot be called a punishment."

We have already seen that as per the contract of service, the services of the petitioner were terminated by the respondent. The petitioner has contravened condition numbers 1 to 3 of the enrolment. He has joined in the service of the respondent about 5 months prior to the order of termination and there was absolutely no ground for the respondent to terminate the services of the petitioner under disguised dismissal. The termination has been effected within 6 months as per condition No. (iii) of the order of enrolment. When it is a termination or discharge simpliciter, there was need to give an opportunity to the petitioner and to have an elaborate enquiry following natural justice. It has been constantly held by our Supreme Court that termination or discharge simpliciter is different from dismissal by way of punishment. The decision of the Supreme Court cited in (1993) 3 SCC P 259 is a case wherein order of dismissal was passed for some misconduct, whereas the instant case is one of discharge simpliciter. So, the contention of the petitioner that he was not given sufficient opportunity and no procedure has been followed before the termination of his services are considerations which are not applicable to the instant case.

9. It was again contended by the petitioner that in Ex. W-5, instructions issued by Government of India, dated 25-11-78, regarding the compassionate ground appointment, in Clause No. 5, it has been stated that in deserving cases even where there is an earning member in the family, a son/daughter/near relative of a Government servant who dies in harness leaving his family in indigent circumstances may be considered for appointment to the post. The petitioner has relied on the above instruction by Government of India, and contended that his termination on the ground that already another member of his family is employed in Madras Port Trust is violative of the said rules. Ex. W-1 circular issued by the Madras Port Trust in March 1990, Clause No. 2 says:

"the request for appointment of a dependant of an employee died in harness/medically invalidated from service will not be entertained if already a son or daughter or wife is in the employment of the Trust."

Ex. W-5 is the general circular issued by the Government of India, whereas Ex. W-1 is a specific circular issued by the Madras Port Trust which will have more bearing on the employee. Apart from that, the enrolment of the petitioner was purely on temporary basis for a period of 6 months and it has been clearly stated in condition no. 3 of his enrolment order that

such enrolment 'confers no right upon him as per the regulations applicable'. It was only a contract of service temporarily for a period of 6 months and he was enrolled as a temporary casual worker and he has served less than 5 months. The contravention of conditions have been found out within the stipulated time of 6 months. Therefore, the instructions issued by the Government of India, under Ex. W-5 will not come for his rescue. From the foregoing reasons, it is clear that the termination is in order and it is not violative of any rules. The petitioner is not entitled to any relief.

In the result, an award is passed dismissing the claim of the petitioner. No costs.

Dated, this the 27th day of August, 1996.

S. THANGARAJ, INDUSTRIAL TRIBUNAL

WITNESSES EXAMINED

For Workman: WW1 Thiru S. Sigamani.

For Management: M.W.1. Thiru P. Angamuthu

DOCUMENTS MARKED

For Workman:

Ex.W-1/7-3-90: Circular issued by the Chairman, Madras Port Trust regarding appointment of dependants of employees died in harness (Xerox copy).

W-2/13-9-94: Memo issued by the Controller of Stores regarding appointment of Mazdoor (Xerox copy).

W-3/14-12-94: Memo issued by the Chief Engineer regarding appointment of Topas (Dredgers) (Xerox copy).

W-4/20-1-95: Memo issued by the Chief Engineer regarding appointment of Watchman in Engineering Department (Xerox copy).

W-5/25-11-78: Xerox copy of O.M.No. 14014/1/77-Estt.(D) regarding compassionate appointments of son/daughter/near relatives of deceased Govt. servant

W-6/ Xerox copy of Ration card of Th. Sampath Kumar

For Management:

Ex.M.1/7-3-89: Termination order issued to Petitioner-workman (Xerox copy).

M-2/17-3-89: Letter from Petr. Union to the Respondent-management (Xerox copy).

M-3/25-4-89: -do-

M-4/30-5-89: Order of Appellate Authority (Xerox copy).

M5/12-10-88: Memo issued to Petitioner-worker (Xerox copy)

नई दिल्ली, 20 नवम्बर, 1996

का०आ० 3426 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल०आई०सी० ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोल्लम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-96 को प्राप्त हुआ था।

[संख्या एल-17012/50/93-आई०आर० (बी० II)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 20th November, 1996

S.O. 3426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure, in the Industrial dispute between the employers in relation of the management of L.I.C. of India and their workman, which was received by the Central Government on the 19-11-96.

[No. L-17012/50/93-IR(B-II)]
BRAJ MOHAN, Desk Office

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 10th day of October, 1996)

Present :

Sri C. N. SASIDHARAN, Industrial Tribunal.

IN

INDUSTRIAL DISPUTE NO. 2/93

BETWEEN

The Senior Divisional Manager, L.I.C. of India, Divisional Office, Jeevan Prakash, Pattom, Thiruvananthapuram,

By Sri. S. S. Kalkura & R. S. Kalkura, Advocates, Thiruvananthapuram.

AND

The General Secretary,
National Life Insurance Employees Association, Trivandrum Division, Pattom, Trivandrum-695 004.

By Sri R. Lakshmana Iyer, Advocate, Thiruvananthapuram.

AWARD

By Order No. L-17012/50/93-IR (B-II) dated 16-2-1993 the Government of India have referred the following industrial dispute for adjudication to his Tribunal :—

“Whether the action of the management of L.I.C. of India in imposing a punishment of stepping down the basic pay of Sri S. Balakrishnan, Assistant, by 3 stages permanently in the time scale applicable and recovery of Rs. 2510/- from him is justified ? If not, to what relief is the workman entitled to ?”

2. The contesting union representing the workman involved in this dispute Sri S. Balakrishnan, has filed a detailed claim statement and the contentions are briefly as below :—The workman is a member of this union. While he was working in Thiruvananthapuram branch of the management Senior Divisional Manager by Order dated 23-1-91 had imposed on the workman the penalties of stepping down his basic pay by three stages permanently in the time Scale of Pay applicable to his cadre and recovery of an amount of Rs. 2,510/-. The workman in the year 1986 availed of Leave Travel Concession (L.T.C.) and had undertaken a journey to New Delhi (Via) Bombay along with his family. His claim for reimbursement of an amount of Rs. 2530/- was sanctioned after clarifications and scrutiny by the management. The workman received the amount of Rs. 2510/-. The management after a lapse of more than 2 months as per memo of charges dated 7-1-1987 alleged that the workman submitted a fraudulent bill and obtained Rs. 2510/- without actually undertaking the journey. Though the workman denied the charges, the management ordered a domestic enquiry. The enquiry officer found the workman not guilty of the charges. But the management had imposed the above mentioned punishment. The appeal and memorial filed by the workman were rejected by the higher authorities. According to the union the punishment in question is illegal, irregular and unsustainable. The management has disagreed with the finding of the enquiry officer without cogent reasons and without sufficient evidence. The management had completely over-

looked the material point that open tickets could be purchased and journey could be undertaken on any other date as the name of the workman and his family were included in the waiting list for journey from Bombay to New Delhi. The management had not properly considered the letter dated 9-4-1988 from the Western Railway in this regard. The management has also not properly appreciated the significance of a sub-urban ticket produced by the workman for correcting the error committed by him in furnishing ticket numbers wrongly. The charges framed against the workman have not been proved that the punishment had not been imposed in a highhanded, illegal and arbitrary manner. The new findings recorded by the management is arbitrary and perverse. According to the union the punishment imposed on the workman are shockingly disproportionate to the nature of the charges and it is a case of victimisation. In addition to the recovery of Rs. 2510/- another major penalty of stepping down his basic pay by three stages permanently in the time scale of pay has also been imposed. Further the annual increments due to him for the years 1988, 1989 and 1990 have also not been sanctioned. The cumulative effect of the punishments is the loss of Rs. 1700/- per month approximately. It is also stated that his promotion to the next higher post of Higher Grade Assistant has also been denied. The prayer of the union is for setting aside the order of punishment dated 23-1-1991 imposed on the workman.

3. The management disputes the allegation of the union. The contentions of management stated in the reply statement are briefly as below :—This court has no jurisdiction to entertain this claim. The claim itself is not maintainable under the Industrial Disputes Act, 1947. The reference is bad in law. The management has held a full fledged domestic enquiry adhering to the principles of natural justice regarding the charges levelled against the workman. The L.T.C. amount was sanctioned vide letter dated 14-10-1986. The management further probed into the matter and received a letter dated 9-10-1986 from the office of Divisional Railway Manager stating that the tickets Nos. 90533 to 90537 as mentioned by the workman in the claim form were neither issued nor reserved by Ferözpür Janatha Express to New Delhi leaving on 14-6-1986. It was also clarified that those tickets were issued only as unreserved on 10-7-1986 and the same could not be issued on 2-6-1986 as claimed by the workman. In the enquiry the workman submitted certain new tickets and some scribbled papers. The enquiry officer accepting such new evidence found the guilt of the employee was not proved. The Disciplinary Authority differed with the findings of the enquiry officer as he had entirely relied on the numbers of the tickets subsequently submitted by the workman.

and a letter from Western Railway where in it was clearly stated that the tickets were issued as open tickets on 2-6-1986. The workman did not have any valid evidence to prove that he and his family travelled on 14-6-1986 from Bombay Central to New Delhi. The enquiry officer had stated in his report that the circumstances do not establish that the employee must have undertaken the journey on Delhi because the open tickets were issued on 2-6-1986 for journey on 14-6-1986 and the manner in which reservations have been arranged. The workman had not produced any supplementary tickets for his travel under reservation. The enquiry officer failed to take into cognisance of this fact and had wrongly relied on the letter dated 9-4-1988 of the Railways. Because of these reasons the Disciplinary Authority differed with the finding of the enquiry officer and found the workman guilty of the charges. By show cause notice dated 15-6-1990 the workman was informed why the Disciplinary Authority has differed the findings of the enquiry officer and proposing the punishment. The appeal and Memorial filed by the workman were rejected after properly assessing the entire evidence and application of mind by the concerned authorities. The management denies all the allegations made by the union against the management. According to the management the action of the workman in making a fraudulent L.T.C. claim is prejudicial to the interest of the management and clauses 3a(1)(d) and 39(1)(e) of the L.T.C. (Staff) Regulation, 1960 are fully applicable in the instant case. The further case of the management is that the claim made by the union is only to be dismissed.

4. Evidence consists of both oral and documentary. Two witnesses have been examined on the side of the management as MW1 and MW2. Exts. M1 to M16 have also been marked on the side of management in support of their case. The workman examined himself as WW1 and exhibits W1 to W13 have been marked on the side of the union.

5. The charge against the workman is that he had submitted a bill for re-imbursement of L.T.C. on 3-7-1986 for journey to New Delhi (via) Bombay and claimed Rs. 2,530/- and received Rs. 2,510/- fraudulently without undertaking the journey. An enquiry was ordered to enquire into the charge levelled against the workman and the enquiry officer found that the workman is not guilty of the charges on the ground that revised ticket numbers produced by the workman nullifies the evidence let in by the management. But the Disciplinary authority differed with the findings of the enquiry officer and held the employee guilty of the charges. Thereafter after issuing show cause notice and getting explanation from the workman

the management has inflicted the punishment as per Ext. M6 order. Now the question to be looked into is whether Ext. M5 proceedings dated 15-6-90 of the Disciplinary authority and Ext. M6 order of punishment are legal and justified.

6. It is not disputed by the learned counsel for the union that the Disciplinary authority is within his powers to disagree with the findings recorded by the enquiry officer. But according to the learned counsel the well settled principles of natural justice require that the disciplinary authority has to point out concrete evidence in support of such disagreement and in the present case that has not been done by the Disciplinary authority which is evident from Ext. M5. A perusal of Ext. M5 makes it clear that the Disciplinary authority has stated cogent reasons for finding the workman guilty of the charges. The disciplinary authority has sufficiently discussed in detail the reasons for the conclusions reached by that authority. As stated above the enquiry officer found the workman not guilty of the charges on the basis of new ticket numbers furnished by the workman as per the letter of Western Railway dated 9-4-1988 which is marked here as Ext. W9. The Disciplinary authority has considered that letter and also other records in the enquiry and differed with the findings of the enquiry officer after full application of mind which is evident from Ext. M5 proceedings. In Ext. M9 letter it is clearly stated that the tickets were issued as open tickets on 2-6-1986. It is only stated in Ext. M9 the 5 tickets were issued as open tickets on 2-6-1986. The case of the workman is that he has travelled in the reserved compartment with his family on 14-6-1986 with the tickets issued on 2-6-1986 as open tickets. After discussing this point the enquiry officer towards the end of his report in page 3 at paragraph 16(iii) has stated as below. "The circumstances do not establish that the employee must have undertaken the journey to Delhi in view of the use of open tickets issued on 2-6-1986 for the journey on 14-6-1986 and the manner in which the reservation have been arranged." After recording such a finding the enquiry officer on the next paragraph found that the guilt of the employee has not been proved. "The Disciplinary authority considered this aspect also and differed with the findings of the enquiry officer. Thus it is clear that the conclusions reached by the Disciplinary authority is fully supported by legal evidence and sufficient reasons. The argument of the learned counsel for the workman on the contrary is without force.

7. The learned counsel for the workman would contend that the Disciplinary authority failed to consider Ext. W9 letter dated 9-4-1988 received from the Railway and produced by the workman and also the explanation of the workman. Accord-

ding to the learned counsel it had come out in the enquiry that the ticket numbers furnished by the workman in the first instance was bonafide mistake which was subsequently corrected by producing the letter dated 9-4-1988. In Ext. W9 it is only stated that open ticket numbers 08929 to 08933 Bombay Central to New Delhi have been issued on 2-6-1986 from Bombay Central Station. There is nothing in Ext. W9 to show that those tickets were issued to the workman. There is no supporting evidence either in the enquiry or before this court to show that the workman travelled from Bombay to New Delhi on 14-6-1986 as alleged by him. The evidence tendered by the workman before this Tribunal is also quite unbelievable and inconsistent as discussed below :

8. The workman has deposed that tickets for journey from Bombay to Delhi had been booked in advance by his uncle Sri Padmanabhan who is staying at Manim, Bombay that the workman demanded tickets on 10-6-1986 itself after reaching Bombay from Thivandrum that his uncle did not give the ticket and told him that it will be given later and that he got the ticket at Bombay Railway Station on the date of the journey. But before the enquiry officer the workman stated that the tickets have been arranged by a friend. Further he has stated before the enquiry officer that at Bombay he was staying at Dombivilli. But before this Tribunal he has stated that he has stayed with his uncle at Manim. The above inconsistent and contrary statement of the workman makes me doubt the genuineness of the journey from Bombay to Delhi as alleged by him. Further in the enquiry he has stated that he do not remember the departure time of the train from Bombay Central that he do not remember the time of starting from Dombivilli to the Bombay Central Station that he do not remember the time of starting from Delhi to Bombay and also the arrival time at Bombay. Such ignorance about his alleged journey also negatives his statement that he undertook the journey in question. It is also noticeable that according to him he visited the house of his acquaintances at New Delhi as stated before the enquiry officer. At the same time what he has stated before this Tribunal is that he has visited one Smt. Jayasree only in Indian Bank. This inconsistent statement also makes his journey to Delhi from Bombay and return journey suspicious. The workman has deposed before this Tribunal that reservation was obtained for his journey from Bombay to Delhi through Travelling Ticket Examiner (TTE) in the compartment who got down the midway of the journey and that the workman does not remember where TTE exactly got down and it was this TTE who had arranged return reservation from Delhi to Bombay. The workman did not produce any receipt or ticket to show that he has travelled in

the reservation compartment obtained by him. He does not remember the name of the TTE who had allegedly arranged reservation. It is also quite unbelievable that the TTE who was in the train from Bombay to Delhi and got down in the midway again in the train from New Delhi to Bombay back. That aspect also shows that the story put forward by the workman is false. The entire story of the workman with regard to his travel from Bombay to Delhi and back are shrouded with suspicion which is not cleared by any concrete evidence even before this Tribunal.

9. Ext. M11 is photostatic copy of the circular issued by the Central Office of the management to all their offices containing instructions and rules regarding LTC. Clause 9 of Ext. M11 requires that an employee claiming reimbursement shall have to submit the cash receipt or vouchers in respect of the fares. Rule 17 of LTC stated in page 14 of Ext. M11 requires that an employee along with his claim for reimbursement submit cash receipt or vouchers in respect of the fares. In the present case the workman has not submitted any such documents stated above either in the enquiry or before this Tribunal to prove that he had made the trips to Delhi from Bombay and back as claimed by him. The absence of any such supporting documents also support the case of management that the workman had submitted fraudulent LTC claim and obtained cash.

10. In support of the contention the workman had pressed into service a letter purported to have been issued by the Western Railway dated 6-2-1992 which has been marked here as Ext. W13. The marking of his letter was strongly opposed by the management. It is pertinent to note that this letter dated 6-2-1992 addressed to the workman has been produced here only on 20-9-1994. As per this letter the Western Railway purported to have confirmed that the tickets bearing numbers 08929 to 08933 were issued on 2-6-1986 for journey on 14-6-1986 from Bombay Central to New Delhi. It is also confirmed that the said tickets were issued to the workman and his family members who have availed sleeper reservation facilities on 14-6-1986. It is also further confirmed that the letter was continuation of the previous letter dated 9-4-1988. The evidence on record before this Tribunal proves that Ext. W13 is a forged document.

11. In Ext. W9 letter tickets numbers were only stated. There is no statement that those tickets were issued to the workman and his family and that they have availed sleeper reservation as stated in Ext. W13. It is further stated in Ext. W9 that it is not possible to confirm sleeper reservation of these tickets at this date. After saying so, on 9-4-1988 it is quite strange to see the statement in Ext. W13 on 6-2-92 that the tickets were issued to the workman and his family members who availed sleeper reservation facilities on 14-6-86. The evidence of MW2 also negatives the case of the workman on the basis of Ext. W13. This witness has proved Exts. M13 to M16 letters. As per Ext. M13 the management sought a clarification from Western Railways regarding Ext. A13 letter and as per Ext. M14 it was informed that the young office staff did not pertain to their office that they did not maintain any file with respect to the reference made in Ext. W13 nor any of their officers of their division had signed in the manner in which Ext. W13 letter was signed. Ofcourse in Ext. M14 there was some mistake in the reference number and it was clarified as per Ext. M16 letter by Western Railways. MW2 has given details of the investigation conducted by him with regard to Ext. W13 and his evidence is supported by Exts. M13, M14 and M16. There are no justifiable reasons

to disbelieve the evidence of MW2. Ext. M3 is a letter admittedly sent by Western Railway. There is admittedly difference in the signature of the Divisional Manager shown in M3 and W13 as there is difference in the first letter "S". Further in Ext. W13 in the signature after the letter "P" the next letter is "E". On the other hand in Ext. M3 after the letter "P" "A" is seen. There is also difference in the seal affixed in Ext. W9 and W13. Further the typing prints in Ext. M12 letter purported to have addressed by the workman to the Western Railways and in Ext. W13 were similar. The evidence of the workman itself shows that the signatures in Ext. W13 and M3 totally differed and the manner in which S. Pande signed was also totally different. The typing in Ext. M12 and W13 also looks similar. Further the capital letter "S" in both these letters are seen typed a little raised from the ordinary level of typing. It is thus evident that both Exts. W12 and W13 were typed on the same machine. These circumstances lead to the only conclusion that Ext. W13 is a forged document and the workman has not cared to adduce any independent evidence to prove that Ext. W13 was issued by the Railway authority or to remove the veil of suspicion around Ext. W13. Hence Ext. W13 cannot be accepted and acted upon in support of the claim of the workman.

12. From the above discussion and the evidence it is clearly proved that the workman did not undertake the journey from Bombay to Delhi and back on 14-6-1986 as claimed by him. This further leads to the irresponsible conclusion that the workman had made a false LTC claim which he was not legally entitled to. Such action of the workman is definitely prejudicial to the interest of the management and the conduct of the workman squarely falls within clause 39 1(d) and 39 1(e) of L.T.C. (Staff) Regulation, 1960 as stated in page 13 of Ext. M12 Staff Regulation. Submitting a false LTC claim is undoubtedly a misconduct which has been proved beyond doubt.

13. As held above the Disciplinary Authority after stating cogent and valid reasons differed with the findings of the enquiry officer and found the workman guilty of the charges. Before inflicting the punishment the workman was given sufficient notice. The Appellate authority has also upheld the punishment after application of mind. The chairman as per Ext. M10 order dated 25-2-1992 finally confirmed the punishment. There are no justifiable reasons to interfere with the findings of the Disciplinary authority. Appellate authority and the chairman of management.

14. The punishment imposed on the workman is stepping down his basic by 3 stages permanently in the time scale applicable and recovery of Rs. 2,510 from him. According to the union the punishment is shockingly disproportionate considering the nature of charges. The workman has deposed before this Tribunal that on an average he will lose Rs. 1,700 PM. He has further stated that 3 other increments due to him have also not been released. The argument advanced on behalf of the workman is that such a draconian punishment has been imposed even though the enquiry officer has found the workman not guilty of the charge and there is no evidence to discard such a categorical finding. The argument of the learned counsel is for interference with the punishment. Ext. M12 staff Regulation empowers the Disciplinary authority to impose penalties for good and sufficient reasons who commits breach of discipline or is guilty of any other prejudicial or good conduct by inter alia with holding of one or more increments in either permanently or a specified period, reduction to a lower service or post or to lower time scale or to a lower stage in a time scale. The nature of the misconduct proved is definitely grave in nature. It was a dishonest means of obtaining monetary benefits without being eligible or legally entitled to it and misusing the welfare facility extended to the employee to make illegal gains. Considering the gravity of the misconduct the present punishment imposed by the management is within the powers of the Disciplinary authority and is commensurate with the gravity of the misconduct. Such a workman does not deserve any leniency in the matter of punishment. There are no justifiable reasons also to interfere with the punishment in question. Accordingly hold that the punishment imposed by the management is legal and justified and no interference is called for from this Tribunal.

15. The workman was found guilty of the misconduct by the Disciplinary authority differing with the findings of the enquiry officer. The punishment is not one of dismissal or discharge and therefore the power of this Tribunal envisaged under Sec. 11-A of the Industrial Disputes Act cannot be invoked. Admittedly there has been absolutely no violation of rules of natural justice. There is no evidence of any unfair labour practice or victimisation or perversity nor was there any basic error or perversity. In these circumstances also no interference is called for from this Tribunal in the matter of punishment.

16. In the result, an award is passed holding that the action of the management of LIC of India in imposing the punishment of stepping down the basic pay of Sr. Balakrishnan, Assistant by 3 stages permanently in the time scale applicable and the recovery of Rs. 2,510/- from him is justified and hence the workman is not entitled to any relief.

C.N. SASIDHARAN, Industrial Tribunal.

APPENDIX

Witnesses examined on the side of management

MW1 — Sri P. Abdul Mageed

MW2 — Sri. M.A. Gajria

Documents marked on the side of the management

- Ext.1 — Pile relating to the enquiry proceedings with regard to the charges against Sri. S. Balakrishnan.
- M2.— Photostat copy of letter addressed to the Railway Divisional Manager, Thiruvananthapuram from Senior Divisional Manager of Management dated 22-8-1986.
- M3 — Letter received by the management from the Divisional Railway Manager, Bombay Central dated 9-10-1986
- M4 — Office copy of chargesheet issued to the workman from the senior Divisional Manager.
- M5.— Office copy of show cause notice dated 15-6-1990 issued to the workman from the Divisional Manager.
- M6.—Photostat copy of order imposing penalty on the workman passed by the Senior Divisional Manager on 23-1-1991.
- M7 — Photostat copy of appeal memorandum dated 15-2-91 submitted by the workman before Zonal Manager of the management at Madras.
- M8 — Photostat copy of order passed by the zonal manager (appellate Authority) on 23-8-1991.
- M9 — Photostat copy of memorandum filed by the workman before the chairman of the management dated 1-10-91.
- M 10 — Photostat copy of the order passed by the chairman on 25-2-1992.
- M 11 — Photostat copy of rules regarding LTC claim
- M12. — Photostat copy of the relevant portions of rules regarding disciplinary proceedings
- M13 — Photostat copy of letter addressed to the Divisional Railway Manager, Western Railway from the management dated 1-10-1994.
- M14. Photostat copy of letter addressed to the Chief (I and HPP) from the Divisional Railway Manager, Bombay Central dated 14-10-1994.

- M15.— Photostat copy of letter addressed to the Divisional Railway Manager, Western Railway from then management dated 16-11-1994.
- M16.— Photostat copy of letter addressed to the Chief (L & HPP) of management from the Divisional Railway Management, Bombay Central dated 17-11-1994.

Documents marked on the side of the workmen

- Ext.W1. Photostat copy of LTC claim filed by the workman.
- W2. Photostat copy of letter issued to the workman from the management dated 11-7-1986.
- W3. Photostat copy of letter addressed to the management from the workman dated 17-7-1986.
- W4. Photostat copy of letter issued to the workman from the management dated 31-7-1986.
- W5. Photostat copy of letter addressed to the management from the workman dated 4-8-1986.
- W6. Photostat copy of letter issued to the workman from the management dated 14-10-1986.
- W7. Photostat copy of claim dated 23-6-1986 filed by the workman before the management.
- W8. Photostat copy of letter addressed to the management from the workman dated 27-4-1987.
- W9. Photostat copy of letter issued to the workman from the Divisional Railway Manager, Bombay Central dated 9-4-1988.
- W10. Photostat copy of letter addressed to the Divisional Railway Manager, Bombay Central from the workman dated 2-2-1992.
- W11. Photostat copy of letter addressed to the Divisional Railway Manager, Bombay Central from the workman dated 10-8-1992.
- W12. Photostat copy of letter addressed to the Divisional Railway Manager, Bombay Central from the workman dated 12-12-1992.
- W13. Copy of letter addressed to the workman from the Divisional Railway Manager, Bombay Central dated 6-2-1993.

नई दिल्ली, 22 नवम्बर, 1996

का.अ. 3427:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया के प्रबन्धन के संबंध में निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1, मुम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-96 को प्राप्त हुआ था।

[संख्या एल-11011/1/93 आई आर-(विविध)/आई.आर. (कोल 1)]

ब्राज मोहन, ईस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award

of the Central Government Industrial Tribunal, No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India and their workmen, which was received by the Central Government on 19th November, 1996.

[No. L-11011/1/93-IR(Misc)]IR(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT MUMBAI

PRESENT :

Shri Justice R. S. Verma, Presiding Officer

Reference No. NTB-1 of 1993

PARTIES :

Employers in relation to the management of Air-India

AND

Their workmen

APPEARANCES :

For the Management—Shri Swamy, E.P. Bharucha and Zubin Kamdin, Advocates

For the Workman—Shri Sanjay Singhavi, Advocate

INDUSTRY : Airlines

Bombay, dated the 31st day of October, 1996

AWARD (Part-II)

Appropriate Government has made the following reference to this Tribunal for adjudication of the disputes, mentioned in the Schedule as noted below :

SCHEDULE

“Whether the Indian Flight Engineers’ Association (IFEA) is justified in demanding :

- a second flight engineer on longhaul flights exceeding 9 (nine) hours that are operated with an additional commander;
- compensation based on their claim for integration of cockpit crew of Air-India Boeing 747 and Air Bus 300 aircrafts; and
- provision of full wing on their uniform instead of half wing as at present;

If so, to what relief the workmen are entitled to?"

2. Both the sides have stated before me that disputes No. (a) and (c) have been adjudicated between the parties by award dated 27-7-1994 and only dispute at No. (b) survives for adjudication. Hence, I am confining this award only to adjudication of dispute No. (b) above.

3. Air India is a corporation incorporated under the provisions of the Air Corporations Act, 1953. It is operating airflights and was having large commercial aircrafts in its fleet including Lockheed Constellation, Super Constellation etc. Later on Boeing 747 were included in its fleet in 1970 and subsequently Air Bus A-300 was also included in its fleet. Initially, the crew complement of the aeroplanes of Air India comprised of a captain, a co-pilot, a flight navigator and a flight engineer. It appears that this position continued upto introduction of Boeing 747 in 1970. With the induction of Boeing 747 and Airbus A-300, the flight navigator ceased to be a member of the crew and the new crew consisted of the captain, a co-pilot and a flight engineer and thus the old system was replaced by a new system called Inertial Navigation System (INS).

4. Indian Flight Engineers Association (IFEA) is a trade union of the flight engineers serving with the Air India. The case of the IFEA is that with the introduction of these larger Aircrafts like Boeing 747 and Airbus A-300, a new Integrated Crew concept (ICC) came into being. The manufacturers of these aircrafts gave additional tasks to flight engineers which involved pilot back-up functions. The National Transportation Safety Board (NTSB) of U.S.A. carried out several studies of air crashes and as a result of these studies recommended to the Federal Aviation Administration (FAA) of the U.S.A. that certain tasks be performed by the Flight Engineers as pilot back-up functions to enhance Flight Safety. These recommendations were accepted by the FAA and as a result the manufacturers incorporated certain pilot back-up tasks to be performed by the flight engineers. Operations Manuals of the concerned Aircrafts detail these back-up tasks. It was pleaded that the major airlines as a measure of improvement in flight safety and for operational efficiency introduced certain other tasks apart from what were laid down by FAA Manufacturers, to be performed by the Flight Engineers.

5. The IFEA at page 17 of the statement of claims (para 20 d) bewailed :

"However, unfortunately these tasks as recommended by regulatory authorities is not performed by the Flight Engineers

in Air India even today and the Flight Engineers are not trained to carry out these tasks."

6. The IFEA has pleaded justification for introduction of ICC concept in Air India and has pleaded that since 1978, this demand is pending with the management. It was further pleaded that the demand of the Association was accepted in the year 1978 itself. However, the management has not introduced the concept of ICC in Air India. The Association then pleaded that a good number of Air Lines had introduced the concept e.g. Singapore Air Lines and Air Mauritius had introduced the concept.

7. IFEA then pleaded as to what the Boeing company had to say about the awareness of the Flight Engineers about the concept of ICC. It also lamented that the flight engineers of Air India were barred from doing the navigational monitoring tasks, which had been recommended in the Operations' Manuals.

8. Lastly, the IFEA lamented that even though ICC concept had not been introduced in the Air India, the work load of Flight Engineers had increased on Boeing 747 and Air Bus A-300, inspite of the fact that the Air India flight engineers were not involved in navigation and monitoring. In its statement of claim, the IFEA gave a comparative chart of the functions of Commander (Captain), First Officer (Co-pilot) and Flight Engineer and submitted on this basis that due to increased work load, the Flight Engineers should be paid the same hourly allowance as is paid to the commanders. It then proceeded to lament that its demand had been turned down by the management. It was pleaded that a comparable situation obtained in respect of Flight Engineers on A-300 B4.

9. The IFEA proceeded to plead that there is a practice in the corporation to grant additional allowance for additional functions and this practice justified grant of hourly allowance to the flight engineers. It referred to the fact that the management has already admitted that the 'integrated crew concept' has to be introduced for operational efficiency and enhanced flight safety and that flight engineers be trained for this purpose. It was pointed out that operations department has already prepared a syllabus to train flight engineers. Upon such premises, it prayed that flight engineers have to (be) paid an hourly payment at the same rate as the allowance paid to the Commander under the heading 'operating without flight navigator' and the mode and rate of payment shall be on the same lines as that paid to the commander and first officer under the said heading.

10. The management of Air India has contested the claim of IFEA on preliminary legal grounds as also on merits. The base of Air India is that the demand pertains to field of managerial functions and exclusive management prerogative and hence is not an industrial dispute. The other preliminary objection was that this Tribunal was already seized of another reference being NTB-1 of 1990. IFEA is already a party to the said dispute and the present demands of the IFEA would be adjudicated in the said previously pending dispute and as such this second reference is not maintainable.

11. On merits, it was averred that the flight engineers, on introduction of integrated crew concept, would not be required to perform any additional duties, which are not already performed by flight engineers. Moreover, flight engineers can not raise a demand only because pilots are being paid an allowance for 'operating without flight navigator'. It was pleaded that on abolition of the post of flight navigator, the flight engineers were never paid any allowance, though the pilots were paid such an allowance as certain additional functions came to be performed by pilots on abolition of the post of flight navigators from the crew complement. It was pointed out that the comparison of flight engineers with pilots was most unwarranted. Upon such pleas inter alia the claim of IFEA was resisted.

12. Both the parties have filed documentary evidence in support of their respective contentions. IFEA filed affidavits of witnesses Pankjan and Shenoy in lieu of examination in chief. Both these witnesses were cross-examined on behalf of management. The management filed affidavit of Shri Bagai in lieu of examination in chief.

13. It may be stated here, that copy of a settlement dated 12-8-1995 touching the subject matter of dispute before me was filed on 28-12-1995. The factum of settlement and correctness of the copy of the settlement were verified before me by Shri Singhvi learned counsel for IFEA. However, this settlement is without prejudice to the rights of the parties in the present dispute hence does not have much bearing.

14. I have heard the learned counsel for the parties. As regards preliminary objection of non-maintainability of this reference, on the ground of pendency of an earlier reference NTB-1 of 1990, suffice it to say that the objection was disposed of by my learned predecessor vide order dated nil and the objection was over ruled. The order finds place above another interlocutory order dated 26th August, 1994 by which application of management dated 12-10-1993 for deleting issue 4 was dismissed.

15. This issue 4 pertains to the present dispute under adjudication and reads as follows :

"Whether the demand of the Flight Engineers for compensation based on the claim for integration of cockpit crew of Air India Boeing 747 and Airbus A-300 and B-4 aircraft is justified on the ground :

- (a) Practices prevailing in Industry;
- (b) Accepted by the management as early as in the year 1978;
- (c) As paid to the Pilots;
- (d) That they carry out the tasks laid down by the INS system in operation manual supplied by the manufacturers of Airbus A-300 and "B-4".

16. Here, I may take up surviving preliminary issue regarding maintainability of the reference on the ground that the dispute is not an 'industrial dispute' at all in as much as it was a managerial function of the Air India to decide what functions were to be performed by the Flight Engineers as members of the crew.

17. A close analysis of the pleadings of the IFEA goes to show that their basic grievance is that even though the manufacturers of the aircrafts in question and the regulatory bodies of U.S.A. had introduced ICC concept of flying and according to this concept certain tasks were being performed by flight engineers elsewhere, such tasks are not performed by the Flight Engineers in Air India even today and flight engineers are not even trained to do so. Upon such premises, the IFEA has raised a demand for introduction of the ICC concept, whereby the Flight Engineers may be allowed to perform such tasks. It was pleaded that necessity of introduction of this concept was recognised as back as 1978, yet the concept was not introduced till the filing of the claim. I may reproduce the exact plea taken in this regard by the IFEA which is contained at page 17 and 18 of their written statement of claim. It reads as follows :

"(d) However unfortunately these tasks as recommended by regulatory authorities is not performed by flight engineers in Air India even today and the flight engineers are not trained to carry out these tasks.

JUSTIFICATION FOR INTRODUCTION OF ICC :

21. The Associations' demand for introduction of ICC in Air India has been pending since the year 1978. On August 3, 1978 a meeting was held by the then Director of Operations (DO) Capt. D. Bose with the representatives of the Association. Minutes of the same are attached. (Annexed as Annex. No.

"C2".) We quote below para 2 of the Annexure—

"Additional function that ne proposed for he proposed for the flight engineer to the flight engineer to perform as a matter of routine during the course of a flight, could include R/T communication during the high stress periods in terminal areas, communication on the company frequency obtaining weather information. Similarly, basic navigation aspect, i.e. intelligent appraisal of the flight profile viz. monitoring the various flight path and having a mental concept of the progress of the flight. He considered that the flight engineer should be capable of at least performing the duties of a First Officer within certain practical constraints in the event of "pilot incapacitation". In fact the D.O. went on to add that the flight engineer should be capable of executing simple manoeuvre in flight with "Auto pilot" to relieve the "pilot" during such contingencies. D.O further added that in the course of a normal flight, therefore, the flight engineer would be reducing the workload of the pilots and become a third pair of eyes which will contribute more effectively towards enhancing the safety of the flight operations. These were, to start with, his basic projections of the flight engineer's role from grassroots levels."

Thus it is very clear that the Associations demand for introduction of ICC was accepted by the management in the year 1978 itself. However till to date the Management has not introduced ICC in Air India."

18. However, contrary to these pleadings an attempt was made to show that even though the ICC concept had not been introduced, yet the Flight Engineers were performing the additional tasks required of them under the ICC concept. In my opinion, such variance between pleading and proof can not be countenanced and the IFEA can not be permitted to make out a new case wholly contrary to its pleadings. Shri Singhvi repeatedly referred to the evidence of IFEA on this aspect and submitted that even though the ICC concept had not been introduced formally, the Flight Engineers were in fact performing additional tasks as per ICC concept. I have not referred to the evidence in this behalf as in my considered opinion it is not open to the IFEA to make out an altogether new case.

19. To my mind, the IFEA has adopted this stance to claim a compensation, which had not become due because additional tasks as per ICC concept were not allowed to be performed by the

Flight Engineers. To put it mildly, an attempt has been made by IFEA to secure a direction to the management, to permit the Flight Engineers to discharge functions as per ICC concept, even though the management was not prepared to do so till this reference was made.

20. What functions shall be performed by a member of the crew and what functions shall not be performed by such a member, is to my mind a purely managerial function and would not fall within the ambit of an industrial dispute as envisaged by the Industrial Disputes Act, 1947. How shall the management run its industry and what shall be allocation of work among different members of the staff is basically a managerial prerogative and a dispute on such a point could hardly be a subject matter of industrial adjudication.

21. Section 2(K) of the Industrial Disputes Act, 1947 defines an industrial dispute as follows :

"industrial dispute means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment of non-employment or the terms of employment or with the conditions of labour, of any person."

Section 7A(1) of the said Act reads as follows :

"The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule (and for performing such other functions as may be assigned to them under this Act)."

Second Schedule to the Act is not germane for this discussion. Third Schedule alone is germane for deciding this point. The Third Schedule of the Act reads as follows :

"Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit wharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;

8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed."

22. It would be seen that right of allocation of additional tasks, not forming a part of the already fixed ordinary duties of the workman, does not fall within the schedule. It appears that to overcome this hurdle, the dispute and the claim have been couched in terms to make these fall in entry 2 of the said schedule. In my opinion, in the garb of a dispute for compensatory allowance, the dispute which basically pertains to mandate the management for allocation of additional tasks, not already assigned to the Flight Engineers by the management, can not be allowed to be referred to or adjudicated by the tribunal.

23. Shri Singhvi was at great pains to take me through the entire evidence of the parties and show that though the ICC concept had not been introduced, the tasks pertaining to such concept were already being discharged by the Flight Engineers. In my opinion, it is not open for the union to adopt such a stance, and a dispute, which basically pertains to domain of managerial prerogative, can not be allowed to be converted into an industrial disputes as adjudicable by this tribunal.

24. What I have stated is amply demonstrated by the fact that as per Annexure A-1 to the statement of claim dated 2nd December, 1992, the question of introduction of ICC concept was still a pending issue and had not been resolved. The list of pending issues annexed to this annexure begins with 'Integrated Crew Concept' as item 1(a). Annexure A-2 to the same statement of claim bewails that the pending issues still remained pending despite a meeting dated 28th December, 1992. By this letter, the IEFA threatened to go on strike and inter alia stated :

"Shall not attend any Technical Refresher classes other than Flight Safety Refreshers, till the time the integrated crew concept is introduced into the operation of Air-India flights. Our demand is that Flight Engineers shall be fully integrated on the Boeing 747 and the Air Bus 300 aircraft as per the Manufacturer's recommendations, after reaching the necessary agreements. (Refer to our letter No. IEFA/AI/7129 dated April 07, 1992)"

Hence, on an overall conspectus of the case, I find that the IEFA has failed to demonstrate that it was an industrial dispute, which had been referred to the Tribunal. Actually in cloak of an industrial dispute, the IEFA sought introduction of ICC concept through the intervention of this Tribunal which is not permissible.

25. What Flight Crew Training Manual or the opinion of the U.S.A. Air Authorities prescribed were only of recommendatory nature and the management was not bound to accept these recommendations as binding on it. This Tribunal has no jurisdiction to interfere with the managerial prerogative of the management. The issue is decided accordingly.

26. This takes me to consideration of issue No. 4 extracted at page 7, para 15 of this award. Since the preliminary issue has been decided by me against IEFA, there is really no occasion for me to adjudicate this issue. But since Shri Singhvi spent much of his breath on elaborating the issue and discussing the evidence led on this aspect of the case, in fairness to him, I should dwell upon the issue, even though briefly. Shri Singhvi contended that with improved technologies, the recommendations of the manufacturers, in operating flight of aircrafts, should be objectively considered by the management and the management must give due regard to

these recommendations because they involve flight safety and efficiency of operations. There can not be any quarrel with this proposition.

27. In the evidence of the union, an attempt was made to show that with implementation of the recommendations of the manufacturers and Aviation Authorities of the U.S.A. certain tasks have already been increased so far as flight Engineers are concerned. May be it is so. With advancement of technology for workman required to perform more sophisticated functions, new skills may have to be acquired and some new functions may have to be performed. In the affidavit of Shri Pankajan, it has been asserted that 'with the introduction of these wide body aircraft, the primary function of the flight navigation, namely navigation of the aircraft was done by a computerised system called the Inertial Navigation System (INS). With the removal of the Navigation from the Cockpit and the introduction of the three man Cockpit work load on Flight Engineer increased considerably.' This evidence of Pankajan is in direct conflict with the pleadings of IEFA contained in sub-paragraphs (a) to (d) of paragraph 20 of the claim petition. In respect of the introduction of I.N.S., averments were made in sub-para (a), (b) & (c) and in the end, it was stated in sub-para (d), categorically and in no uncertain terms that "these tasks...is not performed by Flight Engineers in Air India even today." I have already extracted this sub-para in extenso at page 8 of the award and need not repeat the same.

28. That it was so, was further admitted by the same witness of the union viz. Shri K. R. Pankajan who admitted in his affidavit :

"In 1982 Air-India Boeing 707 aircraft VT-DJJ crash landed at Bombay Airport. His Lordship Justice P. B. Sawant conducted an enquiry into this accident. The exhaustive Report of the Enquiry Commission has recommended the institution of the I.C.C. in Air-India. However, I.C.C. was not implemented by Air-India till 1993. Justice Sawant's Report has also highlighted the fact that Air-India was not following the Operations Manual requirements in total disregard of the requirement of flight safety."

29. The above admission shows that the institution of ICC was implemented in the Air India only in 1993.

30. The IEFA has prayed that they be paid the same allowance as paid to the Commander under the 'Heading Operating without Flight Navigator'. In the pleadings and evidence, certain additional duties have been recounted, which are being performed by the Flight Engineers. Mr. Pankajan in his affidavit dated 15-11-94 stated as follows :

"Boeing 747 is a wide Body aircraft with a passenger carrying capacity of approx. 400 and a maximum all up weight of 362894 Kgs. With this larger size of the aircraft along with its higher load carrying capacity and higher all up weight it became necessary to upgrade or alter several existing systems or to add several new systems for primary as well as back up functions to meet higher standards, to achieve the required level of operational efficiency and to enhance flight safety, and comfort of passengers. Further, a number of systems which were operated by the Pilots on the Boeing 707 aircraft were transferred to Flight Engineers' panel or relocated to a place where Flight Engineer can reach directly from his seat and operate them. The operation, control, monitoring and recording of their data are the responsibility of the Flight Engineer. A few such systems are :

- (i) Auxiliary power unit (APU), a turbine engine capable of supplying electrical and pneumatic power to the a/c having its own fire warning and protective systems, controls, indications etc.
- (ii) Much larger capacity electrical system with several new features, controls protective circuit, indicators etc.,

- (iii) Sophisticated and modified airconditioning, pneumatic and pressurisation system capable of effectively functioning on ground and inflight,
- (iv) A sophisticated Dual Fire Warning and Fire Extinguishing system for engines and Cargo compartments,
- (v) Four independent Hydraulic systems, each having an Engine driven pump and a Back up system fully capable of operating on the aircraft/ external pneumatic power, with separate controls and indicators,
- (vi) An elaborate Landing Gear System with Individual position indications for five landing gears, 16 brake temperature indications and monitoring systems one for each main Gear Wheel, and a Dual Anti-Skid system for each of the main wheel,
- (vii) A Weight and Balance System, (now deleted),
- (viii) A Digital Flight Data Recorder and a Quick Access Recorder which Record all important flight and engine parameters, on to which the flight details are fed by the Flight-Engineer,
- (ix) Two Annunciator Modules with a number of warning lights and indications,
- (x) Large capacity Fuel Tanks along with modified engine fuel feed systems and fuel jettison systems, with several additional controls and indications,
- (xi) A water injection system with very critical Operational Band designed to augment engine take-off thrust limits to accommodate higher payload capacity. (presently not utilized).

6. The increase in workload can be verified from Operations Manuals of the respective aircraft.

7. In addition to operating and monitoring of the above systems during the entire flight, there are various additional responsibilities and workload entrusted to the Flight Engineer like performance Monitoring of the aircraft, Engines and Systems, accurate recording of Flight Data on the Flight Report Book, precise and accurate reporting of malfunctions/ faults etc. after consulting the Fault Reporting Manual working out penalties and operational restrictions when a particular system is partially or fully inoperative, or a configuration Deviation occurs due missing part or parts on the aircraft. A detailed list of aircraft Manuals are listed and annexed in Schedule I & II of Statement of Claim."

31. The Flight Engineers on the aforesaid basis claimed allowance at par with the Commanders. Mr. Pankajan stated as under :

"I state that since the introduction of the 747 some time in 1971, Commanders were being paid Rs. 20 per hour as 'Flying without Navigator Allowance'. This allowance was also being paid to Commanders who actually were operating Boeing 707 flights where a Navigator was also present as crew member, because his junior was either on the Boeing 747 aircraft or that he was qualified to fly both the 707 and the 747 aircraft at that time. This amount is paid in equivalent local Currency at the layover/ Crew change/Terminal Station, converted from Rupees at the 1970 conversion rates. This allowance was doubled in around 1988, i.e. from Rs. 20 to Rs. 40 per hour, with all other conditions remaining the same. Recently it has been further increased by a Settlement between Air India and the Indian Pilots' Guild.

Flight Engineers have started being paid Rs. 25 per hour on the same basis, after the settlement between the IFEA and Air India dated 12th August, 1993."

32. Now, I may readily state that Commander on an Aircraft stands on an altogether different footing from the co-Pilot and the Flight Engineer. He is the Captain of the team which flies the Aircraft. Comparisons between unequals can not be made. Shri Singhvi fairly conceded this position but urged that comparison with the Commander had been made

only to show that even though Commander was compensated for additional functions, the Flight Engineers were not, which was unjust. Actually, in view of my finding on the preliminary issue, this discussion is not of great significance but I have dealt with the submission, since the same was urged with great vehemence.

33. The aforesaid statement of Pankajan shows no proper basis for evaluating the financial compensation to be awarded to Flight Engineers for the alleged additional functions said to be performed by the Flight Engineers. Moreover, there is no proper basis before me to show that the amount of Rs. 25 per hour duly settled between the parties is not an adequate compensation to the Flight Engineers.

34. On the aforesaid premises, I do not find any substance in the claim of the I.F.E.A. and the same is rejected.

35. However, before parting I may observe that it would be in the interests of industrial peace and harmony that the management may appoint a committee to go into the question if the amount of Rs. 25 per hour is not adequate. The composition of the committee may be appropriately as follows :

- (1) Chairman—An Officer not below the rank of Director of Operations.
- (2) Members (i) An Officer not below the rank of the Chief of Finance Department in the management, by whatever designation he is known.
- (ii) A Commander nominated by the Chairman of the committee.
- (iii) A co-Pilot nominated by IFEA to sit on the Committee.
- (iv) A Flight Engineer nominated by IFEA.

The Committee may evaluate the claim of the IFEA say in four months and may suggest compensation package which shall be adequate. It may also specify the date from which the same may be payable. I sanguinely hope that findings of such a committee may settle this dispute, which I have held to be non-adjudicable by me. The management may then decide the matter at its own level within two months of the receipt of the report of the said committee.

36. Matter is disposed as above.

R. S. VERMA, Presiding Officer

नई दिल्ली, 21 नवम्बर, 1996

कांआ० 3428 :—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारत के राजपत्र, असाधारण, भाग-II, खंड 3(ii) दिनांक 8 जून, 1995 में प्रकाशित श्रम मंत्रालय, भारत सरकार की अधिसूचना सं० कांआ० 509(ई) दिनांक 8 जून, 1995 में निम्नलिखित संशोधन करती है :

उक्त अधिसूचना में, "उक्त प्रयोजनार्थ केन्द्रीय सरकार द्वारा मान्यताप्राप्त नियुक्ता संगठनों के परामर्श पर धारा 4 के खंड (च) के अधीन केन्द्रीय सरकार द्वारा नियुक्त" शीर्षक के नीचे, क्रमांक 32 के लिए की गई प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी; अर्थात् :—

"श्रीपी०एस० बीमा

निदेशक (कामिक)

राष्ट्रीय कपड़ा निगम लिमिटेड

स्कोप काम्प्लेक्स, कोर-4

7, लोदी रोड,
नई दिल्ली-110003"

[सं. यू-16012/2/95-एसएस-1]
जोषी शुक्ला, अवर सचिव

New Delhi, the 21st November, 1996

S.O. 3428.—In exercise of the powers conferred by Section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour No. S.O. 509 (E), dated the 8th June, 1995 published in the Gazette of India, Extraordinary, Part-II, Section-3 (ii), dated the 8th June, 1995 :

In the said notification under the heading 'Appointed by the Central Government under clause (f) of Section 4 in consultation with organisations of employers Recognised by the Central Government for the purpose' for the entries against Serial No. 32, the following entries shall be substituted namely :—

Shri P. S. CHEEMA,
Director (Personnel),
National Textile Corporation Limited,
SCOPE Complex, Core-IV,
7-Lodhi Road,
New Delhi-110003.

[No. U-16012/2/95-SS.1]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 21 नवम्बर, 1996

सां.आ. संख्या. 4329.—कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) को धारा 2 के खण्ड (ट ख) द्वारा प्रदत्त शक्तियों का करते हुए केन्द्रीय सरकार 9 दिसम्बर, 1995 को भारत के राजपत्र के भाग-2, खण्ड 3(ii) में प्रकाशित दिनांक 21 नवम्बर 1995 की भारत सरकार, श्रम मंत्रालय को अधिसूचना सां.आ. संख्या 3232 में निम्नलिखित संशोधन करती है अर्थात् :—

उक्त अधिसूचना की अनुसूची में :—

(i) श्रम संख्या 9 के सामने स्तम्भ (2) के अंतर्गत प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि प्रतिस्थापित की जाएगी, अर्थात् :—
श्री पंकज,
सहायक भविष्य निधि आयुक्त,
बिहार, पटना

(ii) श्रम संख्या 13 के सामने स्तम्भ (2) के अंतर्गत प्रविष्टि के स्थान पर, निम्नलिखित प्रविष्टि

प्रतिस्थापित की जाएगी, अर्थात् :—
श्री के.सी. मेहता,
सहायक भविष्य निधि आयुक्त,
हरियाणा, फरीदाबाद

[संख्या आर-11013/2/90-एस.एस. II]

जोषी शुक्ला, अवर सचिव

New Delhi, the 21st November, 1996

S.O. 3429.—In exercise of the powers conferred by clause (kb) of Section 2 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (19 of 1952) the Central Government hereby makes the following amendments in the Notification of the Government of India, Ministry of Labour S.O. No. 3232, dated 21st November, 1995 published in Part-II, Section 3(ii) of the Gazette of India, dated the 9th December, 1995 namely :—

In the Schedule to the said Notification :—

(i) against Serial No. 9 for the entry under column (2) the following shall be substituted, namely :—

Shri Pankaj Assistant Provident Fund Commissioner, Bihar, Patna.

(ii) against Serial No. 13 for the entry under column (2), the following shall be substituted, namely :—

Shri K. C. Mehta, Assistant Provident Fund Commissioner, Haryana, Fari-dabad.

[No. R-11013/2/90-SS. II]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 19 नवम्बर, 1996

सां.आ. 3430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास स्टोमिक पावर प्रोजेक्ट के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-96 को प्राप्त हुआ था।

[सं. एल-43012/14/85-डी.वी./डी. II(बी)]

के.सी.बी. उष्णी, डीस्क अधिकारी

New Delhi, the 19th November, 1996

S.O. 3430.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the

Central Government hereby publishes the award of the Industrial Tribunal Madras as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Madras Atomic Power Project and their workman, which was received by the Central Government on 19th November, 1996.

[No. L-43012(14)|85-D.V|D-II(B)]

K. V. B. UNNY, Desk Officer
ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Friday, the 27th day of September, 1996

PRESENT :

THIRU S. THANGARAJ, B.Sc., L.L.B.,
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 45 OF 1986

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Dispute Act, 1947 between the Workmen and the Management of Madras Atomic Power Project, Chingleput Dt.).

BETWEEN

Shri C. Varadaraj,
53/30, Tatan Malai Street,
Bingnatham,
Chingleput-2 Tamil Nadu.

AND

The Project Director,
Madras Atomic Power Project,
Distt, Chingleput, Tamil Nadu-603 102.

REFERENCE :

Order No. L-43012|(14)|85-D.V|D II(B), Ministry of Labour, dated 16/19-6-86, Govt. of

India, New Delhi

This dispute after remand, coming on this day for final disposal in the presence of Tvl. S. Ayyathurai and D. Hariparanthaman, Advocates appearing for the workmen and of Central Government Pleader for the Management, upon perusing the reference, Claim and Counter statements, other papers on record, and High Court's Order in W.A. No. 1178/91 dated 7-8-96, this Tribunal passed the following

ORDER

This reference has been made for adjudication of the following issue :—

“Whether the action of the management of Atomic Power Project Madras in dismissing

sing the services of Sh. C. Varadaraj, Ex-Helper 'B' with effect from 29-9-83 is justified? If not, what relief the workman concerned is entitled to?”

Order passed by the Hon'ble High Court in W.P. No. 1178/91 on 7-8-96, perused. The W.A. was allowed setting aside the order in W.P. No. 7078/88 and the award passed by this Tribunal was upheld. Hence, the I.D. is closed accordingly as per the order passed in W.A. 1178/91 by the Hon'ble High Court.

Dated, this the 27th day of September, 1996.

S. THANGARAJ, Industrial Tribunal
नई दिल्ली, 20 नवम्बर, 1996

का०श्रा०. 3431:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग, अजमेर के प्रबन्धतंत्र के संबंधित नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं० एल-40012/156/96-आईआर(डी2)(B)]

के०डी०बी० उष्णी, डेस्क अधिकारी

New Delhi, the 20th November, 1996

S.O. 3431.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Deptt. of Telecommunication and their workman, which was received by the Central Government.

[No. L-40012|156|90-IR(D2)(B)]

K. V. B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

कैस नं० सी० आई० टी० 31/1991

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश
नं० एल 40012/156/90 आई० आर० डी० बी०
दिनांक 19-4-91

श्री मन्थ नारायण सिंगोटिया पुत्र श्री रूप सिंह निवासी पुष्कर
—प्रार्थी

बनाम

डायरेक्टर, टेलीकॉम, उदयपुर।

एवं

टेलीकॉम डिस्ट्रिक्ट इंजीनियर, अजमेर

—अप्रार्थीगण

उपस्थिति

माननीय न्यायाधीश श्री के० एन० व्यास, आर० एच० जे०एम
प्रार्थी की ओर से कोई हार्जिर नहीं
अप्रार्थीगण की ओर से : श्री हवा सिंह एच
श्री आर०एन० गुर्जर
दिनांक अवांटे: 6-11-1995

अवांटे

केन्द्र सरकार द्वारा निम्न विवाद अधिनियम हेतु निर्देशन
किया गया है :

"Whether the action of the management of Department of Telecommunications in terminating the services of Shri Satyanarayan Singodia, Ex-casual labour on installation of Crossbar exchange at Ajmer w.e.f. 1-5-88 is justified? If not, what relief is the workman concerned entitled?"

2. श्रमिक यूनियन द्वारा प्रस्तुत क्लेम में जो तथ्य अभिकथित किये गये हैं कि वे इस प्रकार हैं श्रमिक ने आवस्यमान कामगार के रूप में में विपक्षी सं० 1 नियोजक के अधीन जून 1986 से अप्रैल 1988 तक कार्य किया था व वर्ष 1986-87 में 291 दिन व 87-88 में 51 दिन कार्य किया था। श्रमिक का यह भी कथन है कि 17-6-87 से पत्र क्रमांक 31 के जरिये उसकी सेवा समाप्त करने का नोटिस दिया गया था लेकिन वह नोटिस कभी भी प्रभाव में नहीं आया व श्रमिक ने लगातार अप्रैल 1988 तक नियोजक के यहां कार्य किया था। श्रमिक का यह भी कथन है कि 1-6-88 से उसे सेवा से हटाया गया व उस समय उससे कनिष्ठ श्रमिकगण नियोजक के यहां कार्यरत थे व श्रमिक की सेवा मुक्ति के समय उसे धारा 25-एफ औद्योगिक विवाद अधिनियम 1947 (जिसे तत्पश्चात अधिनियम संशोधित किया जायेगा) के प्रावधान के अनुसार कोई भी नोटिस या मुआवजा अदा नहीं किया गया। श्रमिक ने यह भी अभिकथित किया है कि सेवा मुक्ति से पूर्व उसकी सेवायें नियमित किया जाना नियोजक के लिये संविधान के अनुच्छेद 14, 16 व 21 के अनुसार आवश्यक था। अनुतोष यह मांगा गया है कि दिनांक 17-6-87 के नोटिस के जरिये उसकी सेवा समाप्त की कार्यवाही को अवैध मानते हुए श्रमिक को पुनः सेवा में बहाल करने, निर्धारित करने व समस्त बकाया वेतन स्वीकृत करने का आदेश दिया जाये।

3. नियोजक की ओर से प्रस्तुत जवाब में इन तथ्यों को स्वीकार किया गया है कि श्रमिक ने नियोजक के जहां जून 1986 से 17-7-87 तक कार्य किया था व 17-6-87 को एक माह का नोटिस दिया जाकर 17-7-87 से उसकी सेवाएं समाप्त की गई। नियोजक के अनुसार सितम्बर 1987 से अप्रैल 1988 के बीच श्रमिक को पुनः श्रौसकार एक्सचेंज के निर्माणाधीन कार्य के लिये मौखिक रूप से नियोजित किया गया था तथा यह कार्य समाप्त होने पर अप्रैल 1988 में उसकी सेवाएं स्वतः ही समाप्त हो गई। सितम्बर 1987 में फरवरी 1988 के बीच श्रमिक द्वारा कुल 139 दिन

कार्य करता बताया गया है। वर्ष 1986 में 1988 तक की कार्य दिवसों की सूची के रूप में एक पृष्ठांक भी नियोजक द्वारा जवाब में प्रस्तुत किया गया है। इस तथ्य को अस्वीकार किया गया है कि श्रमिक को सेवा मुक्ति करने के पश्चात् किसी कनिष्ठ कर्मचारी को नियोजक में रखा गया।

4. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का व नियोजक की ओर से एक गवाह मुकुन्दी नाव का शपथ पत्र प्रस्तुत किया गया है। नियोजक की ओर से श्रमिक की उपस्थिति के दावत परिशिष्ट आर-1 प्रस्तुत किया गया है व श्रमिक ने प्रदर्शक डब्ल्यू-1 प्रमाण पत्र प्रस्तुत किया है। बहस के समय श्रमिक यूनियन की ओर से कोई भी उपस्थित नहीं हुआ। नियोजक के विद्वान प्रतिनार्थ को सहम सुनी गई।

5. दोनों पक्षों की ओर से जो अभिकथन प्रस्तुत हुए हैं तथा जो परिशिष्ट आर-1 प्रस्तुत किया गया है उससे यह स्पष्ट है कि जून 1987 तक श्रमिक ने 240 दिन से अधिक कार्य नियोजक के यहां किया था व परिशिष्ट आर-1 से यह भी स्पष्ट है कि मई 1989 तक कुल 576 दिन श्रमिक ने नियोजक के यहां कार्य किया था। नियोजक की विनिष्ट प्रतिरक्षा यह है कि 17-7-87 से श्रमिक की सेवाएं समाप्त हो गई थी जिसका कोई विवाद न्यायाधिकरण के समक्ष नहीं है तथा पुनः सितम्बर 1987 से श्रमिक को नियोजित करने के पश्चात् उसने 240 दिन कार्य नहीं किया था इस कारण धारा 25-एफ अधिनियम के प्रावधान की पालना किया जाना नियोजक के लिये आवश्यक नहीं था। इन अभिकथनों को देखते हुए सर्वप्रथम विनिश्चय हेतु यह बिन्दु उपलब्ध होता है कि क्या 17-7-87 से श्रमिक की सेवाएं समाप्त हो गई थी व उस कारण उस तिथि से पूर्व किए कार्य दिवसों पर श्रमिक द्वारा कार्य किया गया वह अवधि धारा 25-एफ अधिनियम के प्रावधान के लिये विचारणीय नहीं है।

6. श्रमिक ने अपने क्लेम में यह बताया है कि वास्तव में 17-6-87 का नोटिस कभी भी प्रभावी नहीं हुआ क्योंकि 17-7-87 के पश्चात् भी श्रमिक ने लगातार नियोजक के यहां कार्य किया है। 17-6-87 का नोटिस पत्रावली पर परिशिष्ट एक उपलब्ध है जिसमें श्रमिक की सेवाएं 17-6-1987 से समाप्त करने हेतु एक माह का नोटिस देने का उल्लेख है। श्रमिक ने शपथ पत्र के भाग सं० 2 में यह कहा है कि उक्त आदेश कभी भी क्रियान्वित नहीं हुआ व श्रमिक लगातार नियोजन में रहा था जिरह जो श्रमिक से की गई है उसमें उसने यह कहा है कि 17-6-87 के नोटिस से उसे नौकरी से नहीं हटाया गया था व लगातार वह नौकरी पर रहा व 3-4 दिन बाद उसे वापस ले लिया गया था। उसका यह भी कथन है कि श्री सी०एल० मोगरा सहायक अभिगन्ता (इन्स्टालेशन) ने उसे लगातार नौकरी पर रखा था। इसके अतिरिक्त श्रमिक ने स्वीकार किया है कि अगस्त 1987 में उसने नियोजक के यहां कार्य नहीं किया था व सितम्बर, 1987 से फरवरी तक 1988 कुल कितने दिन

काम किया यह मौखिक याद नहीं। इस सुझाव को उसने अस्वीकार किया है कि 210 दिन या उससे अधिक समय तक नियोजक को यहाँ उसने कार्य नहीं किया। 1988 में किस तिथि को सेवा मुक्त किया गया यह याद नहीं होना श्रमिक ने बताया है। उसका यह भी कथन है कि सितम्बर 1987 से अप्रैल 1988 के बीच मात्र 139 दिन काम किया ही यह याद नहीं। उसका यह भी कथन है कि सितम्बर 1987 से मुकुन्दी लाल ने यह बताया है कि श्रमिक उनके विभाग में जून 1986 से कार्यरत था व 17-7-87 से उसे सेवा मुक्त कर दिया गया था। इसके पश्चात् उसे पुनः विशेष कार्य के लिए नियोजित किया गया था तथा वह काम पूरा होने पर उसे सेवा में हटाया गया। जिरह में उसने स्वीकार किया है कि श्रमिक सत्य नारायण ने कुल मिलाकर 576 दिन काम किया था जिसका उल्लेख परिशिष्ट आर-1 में है जून 1986 से मई 1989 की अवधि के बीच का है। जिरह में श्रमिक ने यह भी कहा है कि पुनः जिस कार्य हेतु श्रमिक को अजमेर में लगाया गया था वह काम बाद में समाप्त हो गया था व दूसरी जगह चालू हो तो उसे पता नहीं। इसके अलावा कोई भी मौखिक साक्ष्य किसी पक्ष की ओर से प्रस्तुत नहीं हुई है। परिशिष्ट आर-1 प्रलेख सहायक अभियन्ता क्रॉसबार (इन्स्टालेशन), अजमेर द्वारा तैयार किया हुआ व हस्ताक्षरित है। इसके यह उल्लेख है कि श्रमिक ने जून 1986 से मई 1989 के बीच कुल 576 दिन उसी अधिकारी के अधीन काम किया था। अगस्त 1987 में एक भी दिन काम नहीं करने का उल्लेख इस परिशिष्ट में है। इस परिशिष्ट से व दोनों पक्षों की मौखिक साक्ष्य से यह अर्थ निकलता है कि जून 1986 से मई 1989 के बीच लगातार क्रॉसबार इन्स्टालेशन का काम अजमेर में चालू रहा व मात्र अगस्त 1987 में श्रमिक ने उस कार्यालय में कार्य नहीं किया था। सितम्बर 1987 से मई 1989 के बीच मार्च 1988 के अलावा हर माह श्रमिक ने अलग अलग संख्या में कार्य दिवसों पर कार्य किया है। ऐसी परिस्थिति में दोनों पक्षों की मौखिक साक्ष्य व उपस्थिति के अभिलेख को देखते हुए यह विनिश्चय किया जाना उचित प्रकट नहीं होता कि 17-6-87 के नोटिस से श्रमिक की सेवाएं वैधानिक रूप से समाप्त की गई थी। जिस कार्य के लिए श्रमिक को पूर्व में नियोजित किया गया था उसी कार्य के लिए उसने बाद में भी सितम्बर 1987 से मई 1989 तक कार्य किया है। 17-6-87 की छटनी के नोटिस में कुल 9 श्रमिकों के नाम दर्ज हैं व नियोजक का यह कथन नहीं है कि उस तिथि पर इसके अलावा अन्य कोई श्रमिक इन्स्टालेशन काम के लिए नियोजित नहीं था। 17-6-87 के नोटिस में 30-3-85 के आदेश का उल्लेख है जिसकी पालना में इन श्रमिकों की सेवा समाप्त करने का नोटिस दिया गया था। नियोजक के विद्वान प्रतिनिधि ने यह भी यह बताया है कि उच्चाधिकारियों से निर्देश प्राप्त होने के कारण 17-6-87 के नोटिस के जरिये कुछ श्रमिकों की सेवाएं समाप्त की गई थी व बाद में उन्हें विशेष कार्य के लिए पुनः नियोजित किया गया था। दोनों पक्षों की मौखिक साक्ष्य व परिशिष्ट आर-1 से यह स्पष्ट है कि

श्रमिक ने लगातार क्रॉसबार इन्स्टालेशन, अजमेर पर ही काम किया था व इस कारण नियोजक की यह प्रतिक्षा सत्य नहीं है कि श्रमिक को पुनः दूसरे विशिष्ट कार्य के लिए नियोजित किया गया था। जिन आदेश के तहत 17-6-87 का नोटिस जारी किया गया उनकी प्रति न्यायाधिकरण के समक्ष प्रस्तुत नहीं की गई है। इन परिस्थितियों में यह विनिश्चय किया जाता है कि 17-6-87 के जरिये श्रमिक को सेवा मुक्त करने का जो नोटिस दिया गया वह वास्तविक नहीं था व मात्र वैधानिक व्यवधान के लिए श्रमिक की सेवाएं इस नोटिस के जरिये समाप्त करने का नोटिस दिया गया था व इस नोटिस के बाद भी सितम्बर 1987 से पूर्व के कार्य हेतु ही श्रमिक को नियोजित किया गया था। माननीय सर्वोच्च न्यायालय के विभिन्न निर्णयों में यह स्पष्ट प्रतिपादित किया गया है कि यदि किसी विशेष उद्देश्य से श्रमिक की सेवा लगातार नहीं मानने के लिए वैधानिक व काल्पनिक व्यवधान बीच में उत्पन्न किया जाता है तो इस आधार पर श्रमिक की सेवा बीच में समाप्त होने की धारणा नहीं ली जा सकती व प्रारम्भ में अन्त तक की अवधि तक श्रमिक ने कार्य किया था व पूरी अवधि द्वारा 25-एफ अधिनियम के प्रावधान के लिए विचारणीय है। अतः मौखिक व प्रावेक्ष्य साक्ष्य के आधार पर यह विनिश्चय किया जाता है कि 17-6-87 के नोटिस से श्रमिक की सेवाएं वैधानिक रूप से समाप्त नहीं हुई थी व उसने एक ही कार्य पर जून 1986 से अप्रैल 1988 तक कुल 548 दिन नियोजक के यहां कार्य किया था। परिशिष्ट आर-1 के अनुसार अप्रैल 1988 के पश्चात् श्रमिक ने अप्रैल 1989 व मई 1989 में नियोजक के यहां क्रमशः 8 व 20 दिन काम किया था। विवाद जो निर्देशित किया गया है उसके अनुसार यह अभिनिर्धारित किया जाना है कि श्रमिक को 1-5-88 से सेवा मुक्त करने की कार्यवाही उचित एवं वैधानिक है या नहीं ऐसी स्थिति में अप्रैल 1989 व मई 1989 के कार्य दिवसों के संबंध में 25-एफ के प्रावधान के बाबत विचार किया जाना आवश्यक नहीं है। चूंकि श्रमिक ने अप्रैल 88 तक नियोजक के यहां 548 दिन कार्य किया था व उसकी सेवाएं मई 1983 से धारा 25 एफ के प्रावधान की पालना के बिना समाप्त की गई हैं इसलिए उसकी सेवा मुक्ति की कार्यवाही अनुचित एवं गैर वैध है।

7. श्रमिक ने अपने क्लेम में यह बताया है कि उसे सेवा से हटाया गया उस समय उससे कनिष्ठ श्रमिक भी अजमेर क्रॉसबार इन्स्टालेशन के कार्य पर नियोजित थे। किसी ऐसे श्रमिक का नाम क्लेम में नहीं बताया गया है। नियोजक ने जवाब में इस तथ्य को अस्वीकार किया है। श्रमिक के मुख्य ध्यान व जिरह को पढ़ने से यह भी स्पष्ट है कि उसने यह स्वीकार किया है कि अजमेर क्रॉसबार पर जो अन्य श्रमिक उससे कनिष्ठ कार्यरत थे उन्हें भी श्रमिक के साथ सेवा से हटाया गया था। अतः नियोजक द्वारा धारा 25-जी के प्रावधान की अवहेलना का तथ्य प्रमाणित नहीं होता है।

8. नियोजक के जवाब में एक प्रतिरक्षा यह ली है कि श्रमिक को जिस विशेष कार्य के लिये नियोजित किया गया

या वह काम समाप्त हो गया या इसलिये उसकी सेवायें समाप्त की गई। परिशिष्ट आर-1 से यह स्पष्ट है कि अप्रैल 1988 के बाद जून 1989 तक भी अजमेर कास वार इन्स्टालेशन का काम चालू था। श्रमिक ने अपने मुख्य बयान में व जिरह में यह कहा है कि अजमेर में इन्स्टालेशन का काम अभी भी चालू है। नियोजक की ओर से जो गवाह मुकुन्दी लाल प्रस्तुत हुआ है उसकी साक्ष्य से यह स्पष्ट नहीं है कि उसने किस अधिकारी के रूप में अपनी साक्ष्य प्रस्तुत की है। अभिलेख कोई भी नियोजक की प्रतिरक्षा हेतु प्रस्तुत नहीं हुआ है। जिरह में श्री मुकुन्दीलाल ने यह कहा है कि अजमेर के अलावा इन्स्टालेशन का कार्य कहीं और चलता हो तो उसे पता नहीं। निर्देशित विवाद के अनुसार श्रमिक की सेवाएं दूर संचार विभाग अजमेर द्वारा समाप्त की गई थी। पक्षकार डिस्ट्रिक्ट इंजीनियर टेलीकॉम अजमेर को बताया गया नियोजक के जवाब में कहीं भी यह प्रतिरक्षा नहीं है कि श्रमिक को नियुक्ति टेलीकॉम डिस्ट्रिक्ट इंजीनियर अजमेर द्वारा नहीं की गई थी। यह मानने का भी आधार है कि सहायक अभियन्ता कासवार इन्स्टालेशन, अजमेर उक्त अधिकारी के अधीनस्थ कार्यरत है। जवाब जो नियोजक की ओर से प्रस्तुत हुआ है उसका प्रमाणीकरण श्री एच०एस० गुप्ता सहायक अभियन्ता (योजना) द्वारा किया गया है व वकील को उन्हीं की ओर से पैरवी के लिए अधिकृत किया गया है। नियोजक को मौखिक साक्ष्य में या जवाब में यह नहीं आया है कि टेलीकॉम इंजीनियर, अजमेर के अधीन कितने सहायक अभियन्ता कार्यरत हैं तथा यह भी प्रतिरक्षा नहीं है कि टेलीकॉम डिस्ट्रिक्ट इंजीनियर अजमेर के अधीन इन्स्टालेशन का कार्य कहीं भी चालू नहीं है। यह मान्य स्थिति है कि एक नियोजक के अधीन यदि एक से अधिक कार्य चालू हो तो उस स्थिति में एक कार्य सम्पूर्ण होने पर भी तमाम श्रमिकों को धारा 25-एफ व 25-जी अधिनियम की पालना के बिना सेवा से नहीं हटाया जा सकता। गवाह मुकुन्दी लाल ने जिरह में यह नहीं कहा है कि अजमेर टेलीकॉम डिस्ट्रिक्ट इंजीनियर के अधीन इन्स्टालेशन का काम कहीं भी चालू नहीं है बल्कि यह कहा है कि अन्य कहीं इन्स्टालेशन का कार्य चालू हो तो उन्हें पता नहीं है। निष्कर्ष यह है कि साक्ष्य के आधार पर यह निश्चय किये जाने का आधार नहीं है कि डिस्ट्रिक्ट इंजीनियर टेलीकॉम, अजमेर के अधीन इन्स्टालेशन का काम कहीं भी चालू नहीं है इसलिये श्रमिक को पुनः सेवा में बहाल करने का अनुतोष दिया जाना उचित एवं वैधानिक है।

9. श्रमिक ने अपने क्लेम व साक्ष्य में यह बताया है कि नियोजक द्वारा सेवा मुक्ति के पश्चात् वह निरन्तर बेरोजगार है। इस तथ्य पर कोई जिरह श्रमिक से नहीं की गई है। नियोजक के गवाह ने खण्डन में इसके विपरीत कोई साक्ष्य नहीं दी है। जवाब में भी नियोजक ने यह प्रतिरक्षा नहीं की है कि श्रमिक अन्यत्र नियोजित है या उसके पास जीवन निर्वाह का अन्य कोई साधन है। मान्य विधि वृष्णांतों के अनुसार नियोजक को इस प्रकार की प्रतिरक्षा लेना व प्रमाणित करना आवश्यक है। दोनों पक्षों की साक्ष्य को देखते हुए यह माना जाता है श्रमिक पुनः सेवा में आने की स्थिति में बकाया वेतन प्राप्त करने का भी अधिकारी है।

10. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है श्रमिक सत्यनारायण को टेलीकॉम विभाग अजमेर द्वारा 1-5-88 से सेवा मुक्त करने की कार्यवाही अनुचित व अवैध है इस लिए श्रमिक पूर्व की सेवा शर्तों के अनुसार पुनः सेवा में आने का, सेवा की निरन्तरता बनाये रखने का व सेवा मुक्ति की तिथि से पुनः सेवा में आने की तिथि तक का समस्त बकाया वेतन व अन्य लाभ नियमानुसार प्राप्त करने का अधिकारी है।

11. अधिनिर्णय आज दिनांक 6-11-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जाये।

के. एल. न्यास, न्यायाधीश

नई दिल्ली, 20 नवम्बर, 1996

का०आ०3432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक-तार विभाग, जयपुर के प्रबन्धतंत्र के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं० एल-40012/20/88-डी 2(बी)]

के०वी०बी० उष्णी, डेस्क अधिकारी

New Delhi, the 20th November, 1996

S.O. 3432.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Postal Deptt. Jaipur and their workman, which was received by the Central Government.

[No. L-40012/20/88-D2 (B)]

K. V. B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी आई टी 22/89

रेफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र० एल-40012/20/88 डी II(बी) दिनांक निल

श्री लाल चंद सीणा पुत्र श्री शिववान राम सीणा, श्रोतवाड़ा रोड, जयपुर।

—प्राची

बनाम

मेडीकल ऑफीसर इन्चार्ज पी एंड टी डिस्पेंसरी नं० 2 जयपुर, तिलक नगर, जयपुर।

—अप्राची

उपस्थित

माननीय न्यायाधीश श्री के० एल० व्यास, आर० एच० जे० एम०
प्रार्थी की ओर से : श्री एस० एफ० बेग
अप्रार्थी की ओर से : श्री पी० एल० अग्रवाल
दिनांक अवार्ड : 23-11-95.

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनियम हेतु निर्दिष्ट
किया गया है :

“Whether the action of the management of
Postal Department Jaipur is justified in
terminating the services of Shri Lal
Chand Meena from 4-9-86? If not, what
relief the workman is entitled to and
from what date?”

2. श्रमिक यूनियन द्वारा प्रस्तुत क्लेम में जो तथ्य बताये
गये हैं वे सारांश में इस प्रकार हैं कि विपक्षी विभाग द्वारा
18-7-84 को दैनिक नवज्योति में नसिम आर्डरली के पद
हेतु नियुक्ति के लिए प्रवर अधीक्षक डाक घर जयपुर द्वारा
विज्ञापन जारी किया गया था व यह पद अनुसूचित जाति
के प्रत्याशी से भरा जाना था। श्रमिक लालचंद ने विज्ञापन
के अनुसार अपना प्रार्थना पत्र प्रस्तुत किया, प्रवर अधीक्षक
द्वारा उसका साक्षात्कार लिया जाकर 15-2-85 को यह
सूचित किया गया कि उसका चयन उक्त पद के लिए किया
गया है व तत्पश्चात् 25-5-85 को श्रमिक ने निमित्तस्थान
में अपनी ड्यूटी जोड़ने की व 4-9-86 तक निरत। उक्त
पद पर कार्य किया तत्पश्चात् बिना किसी जांच के व धारा
25-एफ औद्योगिक विवाद अधिनियम, 1947 (जिसे तत्पश्चात्
अधिनियम संशोधित किया जायेगा) के प्रावधान की पाबनी
के बिना श्रमिक की सेवाएं 4-9-86 से समाप्त की गई।

श्रमिक यूनियन का यह भी कथन है कि लालचंद को सेवा
मुक्त करने के पश्चात् उसके स्थान पर किशन लाल सैय
नाम के व्यक्ति को नियुक्ति दी गई। श्रमिक ने सेवा मुक्ति
की तिथि से लगातार बेरोजगार होता बताने हुए यह जगुगीय
क्लेम किया है कि उसकी सेवा मुक्ति के आदेश को अनुचित
व अवैध मानते हुए उसे पुनः सेवा में लेने का निर्देश विपक्षी
विभाग को दिया जावे व बकाया वेतन व अन्य आर्थिक
लाभ स्वीकृत किये जायें।

3. विभाग की ओर से प्रस्तुत जवाब में इन तथ्यों को
स्वीकार किया गया है कि अनुसूचित जाति प्रत्याशी ने
नसिम आर्डरली का पद भरेने के लिए दैनिक नवज्योति में
विज्ञापन दिया गया था, श्रमिक लालचंद भीणा ने उस
पद हेतु आवेदन किया था, लालचंद का साक्षात्कार लिया
जाकर उसे चयनित किया गया था व इसके परिणामस्वरूप
उसने 25-5-85 को निमित्तस्थान में ड्यूटी जोड़ने की थी।
यह भी स्वीकार किया गया है कि 4-9-86 को श्रमिक
की सेवाएं समाप्त की गई व उसके पूर्व कोई भी जांच नहीं

की गई व न ही कोई नोटिस या मुआयजा श्रमिक को
दिया गया। प्रतिरक्षा नियोजक द्वारा यह भी कहा है कि
पद पर श्रमिक को नियुक्त किया गया था उस हेतु न्योजन
कार्यालय ने अनुपलब्धता प्रमाण पत्र जारी किया था इसलिए
साक्षात्कार के पश्चात् श्रमिक को तदर्थ रूप से दैनिक मजदूरी
पर नियुक्त किया गया था, इस पद के लिए श्रमिक उचित
योग्यता नहीं रखता था, सेवा कार्य के दौरान उसका कार्य
संतोषजनक नहीं था व अधिकृत विभागीय अधिकारी ने श्रमिक
का चयन नहीं किया गया था इसलिए बिना जांच के उसकी
सेवाएं समाप्त की गई। सेवा मुक्ति से पूर्व 240 दिन श्रमिक
द्वारा कार्य करने के तथ्य को जवाब में अधीकार दिया
गया है व इसके अलावा हम तथ्य को भी ध्यान बनाया
गया है कि श्रमिक की सेवा मुक्ति के पश्चात् किसी अन्य
व्यक्ति को इस पद पर नियुक्ति दी गई। उक्त वर्णित
तथ्यों के आधार पर क्लेम खारिज करने का अनुरोध किया
गया है।

4. मौखिक साक्ष्य में श्रमिक यूनियन द्वारा श्रमिक
लालचंद का व नियोजक की ओर से एक गवाह श्री
एन० के० श्रीवास्तव का शपथ पत्र प्रस्तुत किया गया।
श्रमिक ने अपनी साक्ष्य में प्रदर्श डबल्यू-1 व डबल्यू-3
प्रलेख को प्रदर्शन व प्रमाणित किया है। जवाब दोहों पक्षों
की सुनी गई।

5. दोनों पक्षों के अभियन्तों, उपनक्ष साक्ष्य व जवाब
को देखते हुए सर्वप्रथम विनिश्चय हेतु विन्दु यह उपलब्ध
होता है कि क्या श्रमिक ने सेवा मुक्ति से पूर्व
240 दिन से अधिक कार्य नियोजक के पास किया।
श्रमिक ने अपने क्लेम में यह बताया है कि उसने 25-5-85
को निमित्तस्थान में ड्यूटी जोड़ने की थी। नियोजक की
ओर से प्रस्तुत जवाब के पद सं० 6 में इन तथ्यों को
स्वीकार किया गया है। श्रमिक का चयन साक्षात्कार के
पश्चात् करने की सूचना जिस पत्र के जरिये दी गई वह
प्रदर्श डबल्यू-3 है। प्रदर्श डबल्यू-7 प्रधान पत्र प्रजारी चिकित्सा
अधिकारी पोस्ट एंड टेक्नीशियन डिप्लोमा नं० 2
जयपुर द्वारा जारी किया हुआ श्रमिक ने प्रस्तुत किया है
जिसमें यह उल्लेख है कि श्रमिक ने उसके पास 25-5-85
से 4-9-86 तक कार्य किया था। इस प्रधान पत्र पर
नियोजक की ओर से कोई भी विवाद नहीं किया गया है।
समशीलता अधिकारी के समक्ष जो रित्वित जाय नियोजक
ने प्रस्तुत किया था उसमें भी इस तथ्य को स्वीकार किया
गया है। नियोजक की ओर से प्रस्तुत जवाब के पद सं०
11 में यह बताया गया है कि श्रमिक ने 240 दिन कार्य
नियोजक के यहां नहीं किया था व अभियन्त उक्त मौखिक
व प्रलेखीय साक्ष्य तथा जवाब के पद सं० 6 में नियोजक
की अस्वीकृति को देखते हुए किसी भी रूप में मान्य
योग्य नहीं है। श्रमिक ने अला मौखिक साक्ष्य में भी क्लेम
या समर्थन किया है व उक्त तथ्य पर उसने कोई विरोध नहीं
है। नियोजक के गवाह श्री श्रीवास्तव ने पद सं० 3 में
स्वीकार किया है कि श्रमिक ने 25-5-85 को ड्यूटी जोड़

की थी तथा यह भी स्वीकार्य तथ्य है कि उसकी सेवाएं 4-9-86 को समाप्त की गई थी। अतः साक्ष्य के विवेचन का निष्कर्ष यह है कि श्रमिक ने 25-5-85 से 4-9-86 तक लगातार 240 दिन से अधिक कार्य निधोजक के यहां किया था।

6. अगला विचारणीय बिंदु यह है कि क्या निधोजक द्वारा धारा 25-एफ अधिनियम के प्रावधान की पालना के अभाव में श्रमिक की सेवाएं समाप्त करने की कार्यवाही उचित एवं वैध है। अधिकारियों में व दोनों पक्षों को साक्ष्य में यह मान्य स्थिति है कि श्रमिक की सेवाएं समाप्त करने से पूर्व उसे कोई भी नोटिस या सुआवजा नहीं दिया गया था। जवाब में नियोजक की प्रतिरक्षा यह है कि श्रमिक की नियुक्ति निर्धारित प्रक्रिया से नहीं हुई थी, वह संबंधित पद के लिए योग्य नहीं था व उसकी नियुक्ति आवांस्मिक रूप से की गई थी इसलिए धारा 25-एफ अधिनियम के प्रावधान की पालना करना आवश्यक नहीं था। इस प्रकार का कोई भी विधि दृष्टान्त निधोजक की ओर से प्रस्तुत नहीं किया गया है कि यदि किसी श्रमिक ने 240 दिन से अधिक कार्य किया हो तब भी उसकी सेवाएं धारा 25-एफ अधिनियम के प्रावधान की पालना के बिना समाप्त की जा सकती हैं यदि उसकी नियुक्ति निर्धारित प्रक्रिया से नहीं हुई हो अथवा आवांस्मिक रूप से की गई हो। धारा 25-एफ अधिनियम के प्रावधान के पठन से व इस पर उपलब्ध माय विधि दृष्टान्तों से यह स्थिति स्पष्ट है कि किसी भी रूप में लगातार 240 दिन से अधिक काम करने पर श्रमिक की सेवाएं धारा 25-एफ अधिनियम के प्रावधान की पालना के बिना समाप्त नहीं की जा सकती जब तक कि सेवा मुक्ति का मामला धारा 2(00) में दिये गये अपवादों की परिधि में नहीं आता हो। नियोजक के विद्वान प्रतिनिधि ने उपलब्ध साक्ष्य से या परिस्थितियों के आधार पर यह बताने का प्रयास नहीं किया है कि श्रमिक की सेवा मुक्ति का मामला धारा 2(00) के तहत छंटनी की परिभाषा में नहीं आता है। यदि नियोजक का यह कथन स्वीकार भी किया जावे कि श्रमिक की नियुक्ति निर्धारित प्रक्रिया से नहीं हुई थी, वह संबंधित पद के लिए उचित योग्यता नहीं रखता था व सेवा काल के दौरान उसका कार्य संतोषजनक नहीं था तब भी विधि स्थिति के अनुसार धारा 25-एफ की पालना के बिना श्रमिक की सेवा समाप्त नहीं की जा सकती थी। अतः जो प्रतिरक्षाएं निधोजक की ओर से ली गई हैं, उन पर विस्तृत विवेचन की आवश्यकता नहीं है फिर भी सुविधा के लिए व मामले को अंतिम रूप से निर्धारण करने के लिए सारांश में उन पर विचार किया जाना अपेक्षित प्रकट होता है। नियोजक की ओर से ऐरोनाटिक सर्विस कोऑपरेटिव बैंक बनाम श्रम न्यायालय एल०एल०जे० 1986 (केरल) 492 का एक निर्णय संदर्भित किया गया है जिसमें यह प्रतिपादित किया गया है कि यदि किसी श्रमिक की नियुक्ति प्रारंभ से ही अवैध हो तो उस स्थिति में उसकी सेवा मुक्ति से पूर्व धारा 25-एफ अधिनियम के प्रावधान की पालना करना नियोजक के लिए

आज्ञापक नहीं है। उपलब्ध तथ्यों के आधार पर जो विधि सिद्धांत निर्णय में प्रतिपादित किये गये हैं उनको मानने के लिए यह व्यावहारिकरण प्रभावित नहीं होता क्योंकि माननीय सर्वोच्च न्यायालय द्वारा विभिन्न निर्णयों में इस विधिक स्थिति को निविवाद रूप से स्थापित किया गया है कि 240 दिन से अधिक कार्य करने की स्थिति में श्रमिक की सेवाएं समाप्त करने से पूर्व नियोजक द्वारा धारा 25 एफ अधिनियम के प्रावधान की पालना करना आवश्यक है।

7. नवज्योति में नसिंग आर्डरली के पद हेतु जो विज्ञापन नियोजक द्वारा प्रसारित किया गया था वह पत्रावली पर प्रस्तुत नहीं किया गया है। नियोजक के गवाह श्री श्रीवास्तव ने मौखिक साक्ष्य में भी यह नहीं बताया है कि उस पद के लिए शैक्षणिक व तकनीकी योग्यता क्या निर्धारित की हुई थी। श्रमिक ने अपने शपथ पत्र में यह बताया है कि वह कक्षा 8 उत्तीर्ण था, आयुर्वेदिक डिस्पेंसरी में कार्य करने का उसे अनुभव था व वह अनुसूचित जाति का प्रत्याशी भी था जिसके लिए पद आरक्षित किया हुआ था। इस संबंध में श्रमिक ने प्रदर्श डब्ल्यू-1 प्राथना पत्र व डब्ल्यू-4 से डब्ल्यू-6 प्रमाण पत्र अपनी शैक्षणिक योग्यता, अनुभव व जाति के प्रस्तुत किये हैं। इस परिस्थिति में यह मानने का उचित आधार उपलब्ध नहीं है कि जिस पद हेतु श्रमिक को नियुक्त किया गया था उसके लिए पर्याप्त शैक्षणिक योग्यता व अनुभव नहीं रखता था। संबंधित विज्ञापन के अलावा विभाग के कोई भी नियम इस संबंध में नियोजक द्वारा प्रस्तुत नहीं किये गये हैं।

8. नियोजक के जवाब में व गवाह श्री श्रीवास्तव के शपथ पत्र में यह बताया गया है कि नसिंग आर्डरली का पद नियोजन कार्यालय के माध्यम से विभागीय समिति के चयन के माध्यम से भरा जाना था किन्तु नियोजक कार्यालय द्वारा अनुपलब्धता प्रमाण पत्र जारी किया गया था इसलिए तदर्थ नियुक्ति हेतु अखबार में विज्ञापन दिया गया था। नियोजन कार्यालय का कोई भी पत्र पत्रावली पर प्रस्तुत नहीं किया गया है किन्तु श्री श्रीवास्तव से इस सम्बन्ध में जिरह नहीं है इसलिए इस तथ्य को स्वीकार किया जाता है कि नियोजन कार्यालय में भर्ती के लिए योग्य प्रत्याशी उपलब्ध नहीं थे। श्रमिक की मौखिक साक्ष्य व उसके द्वारा प्रस्तुत प्रदर्श डब्ल्यू-2 व डब्ल्यू-3 पत्रों से यह स्पष्ट है कि श्रमिक का साक्षात्कार एक समिति द्वारा लिया जाकर उसे चयनित घोषित किया गया था। नियोजक के जवाब व श्री श्रीवास्तव के साक्ष्य में शस्पष्ट रूप से यह अभिकथित किया गया है कि उचित डी०पी०सी० से श्रमिक का साक्षात्कार नहीं हुआ था। यह कथन इसलिए मान्य नहीं है क्योंकि स्पष्ट रूप से यह नहीं बताया गया है कि पद के लिए डी०पी०सी० का गठन किस प्रकार किया जाना था, उसमें कौन-कौन सदस्य शामिल होने थे व श्रमिक को साक्षात्कार जिस समिति द्वारा लिया गया उसमें कौन

अधिकारी सम्मिलित थे तथा यह समिति किस प्रकार नियम विरुद्ध थी। ऐसी स्थिति में नियोजक का यह कथन भी मान्य नहीं है कि जिस समिति ने श्रमिक का चयन किया था वह नियमानुसार गठित नहीं थी। यह मौखिक या प्रालेखीय साक्ष्य भी प्रस्तुत नहीं की गई है कि नर्सिंग आर्डरली के पद हेतु भर्ती करने के लिए कौन अधिकारी इक्षम थे व प्रवर अधीक्षक द्वारा श्रमिक को नियुक्ति देने की कार्यवाही किस प्रकार नियमानुसार उचित नहीं थी। कोई विभागीय नियम भी इस सम्बन्ध में प्रस्तुत नहीं किये गये हैं। श्रमिक को जो प्रारम्भिक नियुक्ति-पत्र दिया गया वह पत्रावली पर उपलब्ध नहीं है किन्तु प्रवर्ग डब्ल्यू-8 नियुक्ति-पत्र प्रस्तुत हुआ है जो 30-8-85 का है इसमें श्रमिक की नियुक्ति नियमित वेतनमान 210—270 में करने का उल्लेख है व साक्ष्य में यह भी वर्णित है कि श्रमिक की नियुक्ति अनियमित प्रत्याशी के रूप में ग्राउन्ड-सार्डर प्रत्याशी की हैसियत से पूर्ण रूप से अस्थाई तौर पर की गई है जो कभी भी समाप्त की जा सकती है। इस नियुक्ति आवेदन में यह उल्लेख नहीं है कि यह पद निर्धारित डी०पी०सी० के माध्यम से भरा जाना है। इस आवेदन में यह उल्लेख भी नहीं है कि किसी अन्य नियमित रूप से चयनित नर्सिंग आर्डरली के उपलब्ध होने पर श्रमिक की सेवाएं समाप्त की जा सकती हैं। दोनों पक्षों की मौखिक साक्ष्य व प्रालेखीय साक्ष्य का निष्कर्ष यह है कि नियोजक पक्ष यह प्रतिष्ठा साबित करने में असफल रहा है कि श्रमिक नर्सिंग आर्डरली के पद के लिए समुचित योग्यता नहीं रखता था, उसका चयन नियमानुसार गठित समिति से नहीं हुआ था तथा श्रमिक की सेवाएं दैनिक मजदूरी पर व आकस्मिक रूप से लिया गया था।

9. नियोजक ने अपने जवाब में एक प्रतिरक्षा यह ली है कि सेवा काल के दौरान श्रमिक का कार्य संतोषप्रद नहीं था इसलिए उसे सेवामुक्त किया गया। सेवा मुक्ति से पूर्व कोई भी नोटिस श्रमिक को नहीं दिया गया। श्रीवास्तव ने अपने साक्ष्य में मान्य यह कहा है कि श्रमिक अपना कार्य अच्छी तरह नहीं करता था व बर्बादियों व ड्रेसिंग मेटोरियल की पहचान करने में सक्षम नहीं था। जिरह में उन्होंने यह स्वीकार किया है कि इस प्रकार श्रमिक कि वृक्षाणिक योग्यता आठवीं उत्तीर्ण है व उसने आर्बुर्वेदिक डिस्पेन्सरी में पूर्व में कार्य किया था। मौखिक साक्ष्य में श्रमिक ने यह बताया है कि वह अपने पद का काम अच्छी प्रकार निष्पादित करने की स्थिति में था। एक तथ्य यह भी विचारणीय है कि यदि श्रमिक अपने कार्य के लिए योग्य नहीं था तो किस प्रकार चयन समिति द्वारा उसका चयन किया गया व किन परिस्थितियों में डिस्पेन्सरी पर उसने लगातार करीब 16 माह तक कार्य लिया गया। विवेचन का निष्कर्ष यह है कि नियोजक की यह प्रतिरक्षा मान्य नहीं है कि श्रमिक अपना कार्य करने के लिए योग्य नहीं था व यदि तर्क के लिए यह माना भी जावे तब भी धारा 25-एफ अधिनियम के प्रावधान की पालना से नियोजक पक्ष को मुक्ति नहीं मिल सकती।

10. नियोजक की ओर से समझौता अधिकारी को समझा जो लिखित जवाब प्रस्तुत किया गया था उसमें यह उल्लेख है कि निदेशक डाक सेवाएं जयपुर द्वारा श्रमिक की नियुक्ति को उचित नहीं माना गया था व इसी कारण उसे सेवा से हटाया गया था। इस जवाब में यह उल्लेख भी है कि किसी दूसरे व्यक्ति को बालबन्ध के स्थान पर नियोजित भी किया गया था। नियोजक की ओर से प्रस्तुत लिखित जवाब में इस तथ्य को अस्वीकार किया गया है कि श्रमिक की सेवा मुक्ति के पश्चात् उस पद पर किसी अन्य प्रत्याशी को नियोजित किया गया। गवाह श्री श्रीवास्तव ने मुख्य बयान में इस बाबत कोई तथ्य उल्लिखित नहीं किये हैं व जिरह में यह कहा है कि उन्हें यह ध्यान नहीं कि श्रमिक की सेवा मुक्ति के पश्चात् उक्त पद पर किसी अन्य व्यक्ति को नियोजित किया गया हो। ईहस के दौरान नियोजक के विद्वान प्रतिनिधि ने यह तर्क दिया कि केन्द्र सरकार के नियुक्ति पर प्रतिबंध के कारण किसी अन्य व्यक्ति को श्रमिक के स्थान पर नियुक्ति नहीं दी गई। इस प्रकार नियोजक पक्ष को इस संबंध में प्रतिरक्षा अस्पष्ट व विरोधाभासी है कि श्रमिक की नियुक्ति का अनुमोदन निदेशक डाक सेवाएं द्वारा नहीं किया गया है व श्रमिक के स्थान पर किसी योग्य प्रत्याशी को नियुक्ति दी गई। इन परिस्थितियों के अनुधार भी धारा 25-एफ के प्रावधान की पालना के बिना श्रमिक की सेवा मुक्ति की कार्यवाही को वैध व उचित नहीं माना जा सकता।

11. अनुतोष के संबंध में नियोजक के विद्वान प्रतिनिधि ने यह तर्क दिया है कि चूंकि श्रमिक की नियुक्ति नियमित रूप से नहीं की गई थी इसलिए उसे पुनः सेवा में लेने का आवेदन देना न्यायोचित नहीं है व उसके स्थान पर समुचित मुआवजा देने का आवेदन दिया जा सकता है। इस संबंध में उन्होंने एल०एल०जे० 1985 (II) (मद्रास) 505 का एक निर्णय प्रस्तुत किया है। संदर्भित निर्णय में जो तथ्य उपलब्ध थे वे वर्तमान प्रकरण के तथ्यों से पूर्ण रूप से भिन्न थे। संदर्भित निर्णय के अनुसार उस मामले में तथ्य यह थे कि संबंधित संस्थान द्वारा आर्थिक तंगी के कारण श्रमिकों की छंटनी की गई थी व विधिक रूप से न्यायालय ने उस छंटनी को अनुचित माना था व श्रमिकों को पुनः सेवा में लगने का आदेश दिया था किन्तु माननीय उच्च न्यायालय ने यह मानते हुए श्रमिकों को सेवा में बहाली का अनुतोष नहीं दिया कि सम्बन्धित संस्थान की आर्थिक स्थिति उनको नियोजित करने की नहीं थी व उन श्रमिकों के नियोजन से संस्थान के बन्ध होने की सम्भावना हो सकती थी। प्रस्तुत प्रकरण के तथ्यों में उक्त निर्णय के सिद्धान्त लागू नहीं होते। नियोजक के विद्वान प्रतिनिधि ने माननीय पंजाब व हरियाणा उच्च न्यायालय का एक निर्णय 1994 लैब०आई०सी० 2459 प्रस्तुत किया है जिसमें धारा 25-एफ अधिनियम के प्रावधान की पालना के सम्बन्ध में कोई भी सिद्धान्त प्रतिपादित नहीं किये गये हैं तथा इस स्थिति पर विवेचन किया गया है कि तदर्थ रूप से व

नियमित प्रक्रिया के बिना नियुक्त किसी कर्मचारी को सेवा में नियमितकरण के मामले में क्या अधिकार उपलब्ध होते हैं। वर्तमान प्रकरण में जो तथ्य सुसंगत हैं उन्हें देखते हुए संदर्भित निर्णय में प्रतिपादित सिद्धान्तों पर विस्तृत विवेचन करने की आवश्यकता नहीं है।

12. श्रमिक ने अपने क्लेम में व मौखिक साक्ष्य में यह बताया है कि सेवा मुक्ति के पश्चात् वह लगातार बेरोजगार है। इस तथ्य पर उससे कोई भी जिरह नहीं की गई है। नियोजक ने अपने जवाब में मात्र यह लिखा है कि उक्त तथ्य को प्रमाणित करने की जिम्मेदारी श्रमिक की है। नियोजक के गवाह श्री श्रीवास्तव ने अपने शपथपत्र में श्रमिक द्वारा वर्णित तथ्य को किसी भी रूप में खण्डन नहीं किया है। इन परिस्थितियों में बिछला बकाया वेतन स्वीकृत करने के सामान्य सिद्धान्त से डेबीयेट करने का कोई भी कारण प्रकट नहीं होता।

13. निर्देशित विवाद का अतिनिर्णय इस प्रकार किया जाता है कि प्रवर अधीक्षक, डाकघर जयपुर द्वारा श्रमिक लालचन्द मीणा को 4-9-86 से नसिम गार्डरली के पद से सेवामुक्त करने की कार्यवाही अनुचित व अवैध है इसलिए श्रमिक पुनः सेवा में आने का व सेवा मुक्ति की तिथि से पुनः सेवा में आने तक का समस्त बकाया वेतन व अन्य लाभ प्राप्त करने का व सेवा की निरन्तरता बनाये रखने का वैधानिक रूप से अधिकारी है।

14. अर्वाइ आज दिनांक 23-11-95 को लिखाया जाकर सुनाया गया जो राज्य सरकार को प्रकाशनार्थ नियमानुसार से भेजा जाये।

के० एल० व्यास, न्यायाधीश

नई दिल्ली, 20 नवम्बर, 1996

का०आ०3433:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पी० डब्ल्यू० आई० बांदीकुई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं० एल०-41012/26/88-डी2(बी)]
के०वी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 20th November, 1996

S.O. 3433.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of

P. W. I. Bandikuai and their workman, which was received by the Central Government.

[No. L-41012/26/88-D2(B)]

K. V. B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

कैम नं० सी०आई०डी० 125/89

केन्द्र सरकार श्रम मंत्रालय की अधिवृत्ता संख्या: एल० 41012/26/88. डी० 2(बी) दि० 2 नवम्बर, 89 छिद्दा पुत्र श्री देवकरण, मकान नं० 211, स्माल चर्च के पास बांदीकुई (राज०)

बनारस

पी० डब्ल्यू० आई० बांदीकुई जिला जयपुर (राज०)

उपस्थिति

माननीय न्यायाधीश श्री के० एल० व्यास, आर०एच०जे०

श्रमिक पक्ष की ओर से: श्री एस०के० जैन
नियोजक पक्ष की ओर से: श्री जे०पी० एस० जैन
दिनांक अर्वाइ: 19-1-1996

अर्वाइ

केन्द्र सरकार ने निम्नलिखित विवाद इस न्यायाधिकरण को अपनी अधिवृत्ता सं० एल० 41012/26/88. डी० 2(बी) दि० 2-11-89 के द्वारा जी० बि० अधिनियम, 1947 की धारा-10(1)(घ) के अन्तर्गत प्रेषित किया है:—

“Whether the action of the management of P.W.I., Bikaner is justified in terminating the services of Sh. Chidda S/o Dev Karan from 25-10-86? If not, to what relief, is the workman entitled and from what date?”

2. दिनांक 18-1-90 की संशोधित विज्ञप्ति के अनुसार निर्देशित विवाद में “पी०डब्ल्यू०आई० बीकानेर” के स्थान पर “पी० डब्ल्यू०आई०, बांदीकुई” का नाम प्रतिस्थापित किया गया है।

3. श्रमिक की ओर से प्रस्तुत क्लेम में यह बताया गया है कि उसे प्रारम्भ में विपक्षी नियोजक द्वारा 1957 में दैनिक मजदूरी पर नियुक्त किया गया था व वर्ष 1980 तक उसने निरन्तर कार्य किया है। द्वारा वर्ष 1985 में उसे आकस्मिक श्रमिक के रूप में नियोजित किया गया तथा दिनांक 25-10-86 तक उसने काम किया व उसके पश्चात् उसे सेवा मुक्त किया गया। क्लेम के पद सं० 2 व 3 में उस अवधि का उल्लेख है जिसमें समय समय पर श्रमिक को नियोजक द्वारा नियुक्त दी गई थी। श्रमिक का कथन है कि सेवा मुक्ति से पूर्व नियोजक द्वारा धारा-25(एक), 25(बी) व 25(एच) के प्रावधान की पालना नहीं की गई इसलिए सेवा मुक्ति की कार्यवाही अनुचित एवं अवैध है। क्लेम

में यह भी बताया गया कि वर्ष 1982 में श्रमिक से उसकी जन्म तिथि वास्तव प्रमाण मांगा गया था जिसके समर्थन में उसने अपना शपथ पत्र प्रस्तुत किया था। दिनांक 3-2-83 को चिकित्सा अधिकारी द्वारा श्रमिक को नियोजन के लिए अयोग्य घोषित करने के संबंध में यह अभिकथित किया गया है कि यदि यह स्थिति सही हो तब भी नियोजक को वैकल्पिक नियोजन की व्यवस्था करना आवश्यक था। अनुतोष यह मांगा गया है कि श्रमिक को वर्ष 1957 से निरन्तर सेवा में मानते हुए बकाया देयक स्वीकृत किया जावे व सेवा में बहाल किया जावे।

4. नियोजक की ओर से प्रस्तुत जवाब में इस अभिकथन को अस्वीकार किया गया है कि श्रमिक ने वर्ष 1957 से नियोजक के यहां दैनिक मजदूरी पर काम किया था। दिनांक 11-7-79 से श्रमिक को आकस्मिक मजदूरी पर नियोजित करना स्वीकार किया गया है तथा यह बताया गया है कि दिनांक 24-11-86 को उसे चिकित्सीय परीक्षण हेतु भेजा गया था व उसके बावजूद ड्यूटी पर उपस्थित नहीं हुआ व न ही चिकित्सीय परीक्षण के लिए उपस्थित हुआ। जन्म तिथि श्रमिक की दिनांक 17-11-1937 बताई गई है व यह भी कहा गया है कि वर्ष 1983 व 85 में स्त्रीनिग कमेटी द्वारा श्रमिक को स्थाई कार्य के लिए चयनित नहीं किया गया क्योंकि उसने उस अवधि तक मात्र 361 दिन काम किया था। इन परिस्थितियों में धारा-25 (एफ) (जी) एवं 25(एच) के प्रावधान की पालना नियोजक द्वारा नहीं करने की प्रतिरक्षा ली गई है।

5. श्रमिक ने क्लेम के समर्थन में स्वयं का शपथ पत्र व प्रवर्ष डब्ल्यू-1 सर्विस कार्ड की फोटो प्रति प्रस्तुत की है। नियोजक की ओर से एक गवाह श्री शिवनंदन सहाय जौहरी व विनोद कुमार जैन के शपथपत्र प्रस्तुत किये गये हैं व प्रवर्ष एम० 1 से प्रदर्श एम० 3 प्रलेख प्रस्तुत किये गये हैं। बहस सुनी गई गवाह विनोद कुमार जैन को नियोजक द्वारा जिरह के लिए प्रस्तुत नहीं किया गया इसलिए उसकी साक्ष्य विचारणीय नहीं है।

6. दोनों पक्षों के अभिकथनों से साक्ष्य के आधार पर सर्वप्रथम यह विनिश्चय किया जाना आवश्यक है कि श्रमिक ने किस अवधि से या किस तिथि से किस तिथि तक व कुल कितने दिन नियोजक के यहां कार्य किया। श्रमिक ने अपने क्लेम में वर्ष 1957 से 1980 तक व पुनः 1985 से 1986 तक आकस्मिक श्रमिक के रूप में विपक्षी के यहां कार्य करना बताया है। इसके अलावा श्रमिक ने यह भी बताया है कि वर्ष 1986 से पूर्व उसकी सेवाएं 1971 व 1980 में भी समाप्त की गई थी व हर बार उसे नये रूप से नियोजित किया गया। इसलिए यदि श्रमिक के कथन को स्वीकार किया जावे तब भी 1985 से पूर्व की सेवा को धारा-25 (एफ) के प्रावधान के लिए विचार में नहीं लिया जा सकता क्योंकि श्रमिक ने स्पष्ट यह कहा है कि 1980 में हटाने के बाद 1985 में उसे पुनः नियुक्त किया गया था। श्रमिक ने अपने कथन के समर्थन में प्रवर्ष डब्ल्यू-1

सर्विस रिकार्ड की फोटो प्रति प्रस्तुत की है। उसका यह भी कथन है कि मूल कार्ड खो जाने के कारण यह कुप्लीकेट कार्ड जारी किया गया था। नियोजक के गवाह शिवनंदन सहाय जौहरी ने विभागीय अभिलेख के आधार पर यह बताया है कि वर्ष 1979 से पूर्व श्रमिक ने नियोजक के यहां कभी काम नहीं किया था तथा यह भी कहा है कि प्रदर्श डब्ल्यू-1 सही प्रलेख नहीं है व इसके कारण यह बताया है कि रेल विभाग का समस्त रिकार्ड विभागीय होता है, प्रवर्ष डब्ल्यू-1 पर संबंधित अधिकारी के पूर्ण हस्ताक्षर नहीं हैं हैं जैसाकि होने चाहिए व लघु हस्ताक्षर भी स्पष्ट नहीं हैं। यह कार्ड जारी करने की तारीख व साल अंकित नहीं है, मोहर भी मात्र हिन्दी में है जो हिन्दी व अंग्रेजी दोनों भाषा में होनी चाहिए तथा इस प्रकार का मूल रिकार्ड उनके कार्यालय में उपलब्ध नहीं है। इन तथ्यों के आधार पर यह बहस की गई है कि प्रदर्श डब्ल्यू-1 रिकार्ड सही नहीं है व इसके आधार पर 1966 से 1971 तक श्रमिक द्वारा नौकरी करने का तथ्य प्रमाणित नहीं होता। नियोजक की ओर से प्रस्तुत तर्क निश्चित रूप से सारवान है। इसके अलावा श्रमिक ने सन् 1957 से 1980 तक नौकरी करना बताया है किन्तु यह सर्विस रिकार्ड मात्र 1966 से 1971 की अवधि का है। बाकी सेवा के लिए कोई भी प्रलेख प्रस्तुत नहीं किया गया है व न ही नियोजक से तलब करवाया गया है। निष्कर्ष यह है कि श्रमिक द्वारा 1957 से 1980 की अवधि में नियोजक के यहां नौकरी करने का तथ्य सही प्रकट नहीं होता है व इसके अलावा भी इस तथ्य का अधि-निर्णय के लिए इसलिए महत्व नहीं है क्योंकि श्रमिक ने क्लेम व साक्ष्य में स्वीकार किया है कि वर्ष 1985 में उसे पुनः नियोजित किया गया था इसलिए 1980 से 1985 की अवधि को सेवाकाल में शामिल नहीं किया जा सकता। सन् 1980 की सेवा मुक्ति के तथ्य के विवाध को जूनियर श्रमिक ने चुनौती नहीं दी है।

7. नियोजक के गवाह श्री जौहरी ने अपने शपथ पत्र में यह बताया है कि श्रमिक ने नियोजक के यहां 11-7-79 से काम किया था व 24-11-86 को उसे डाक्टरी परीक्षण हेतु भेजा गया परन्तु व वहां उपस्थित नहीं हुआ व न ही ड्यूटी पर आया। श्रमिक ने अपनी साक्ष्य व क्लेम में वर्ष 1980 के बाद 1985 में पुनः नौकरी पर आना बताया है किन्तु नियोजक ने जिन तथ्यों को स्वीकार किया है उसे देखते हुए यह साबित होता है कि श्रमिक ने 11-7-79 से 25-10-86 तक नियोजक के यहां कार्य किया था। इसका विवरण प्रदर्श एम० 3 स्वयं नियोजक द्वारा प्रस्तुत किया गया है। कथित सेवा मुक्ति की तिथि 25-10-86 से एक साल पूर्व की अवधि से गणना करने पर भी यह स्पष्ट है कि श्रमिक ने उस एक वर्ष की अवधि में 244 दिन काम किया था व इस कारण यदि यह साबित हो कि श्रमिक की सेवाएं 25-10-86 के बाद समाप्त की गई तब उस स्थिति में नियोजक के लिए धारा-25(एफ) के प्रावधान की पालना करना आवश्यक था व यह कार्यवाही मान्य रूप से नियोजक द्वारा नहीं की गई है। विनिश्चय यह किया जाना है कि

दिनांक 25-10-86 के पश्चात क्या श्रमिक ने स्वेच्छा से से काम पर आना बंद किया? यदि उने सेवा से हटाया गया?

8. नियोजक के गवाह श्री जौहरी ने शपथ पत्र में यह कहा है कि दिनांक 24-11-86 के पश्चात् श्रमिक ड्यूटी पर नहीं आया। उनका यह बयान व्यक्तिगत जानकारी पर आधारित नहीं है क्योंकि बांदीकुई में उनकी नियुक्ति 5.6.93 को हुई थी। दिनांक 24-11-86 को डाक्टरों की परीक्षा के लिए जो पत्र श्रमिक को दिया गया वह पत्रावली पर उपलब्ध नहीं है। श्रमिक ने अपने बयान में सन् 1986 से सेवा समाप्ति करना बताया है व जिरह में यह कहा है कि उसे डाक्टरों की परीक्षा हेतु 1986 में कोई भी नहीं दिया गया था इसके अलावा कोई भी जिरह श्रमिक से नहीं की गई है। प्रदर्श एम. 3 प्रलेख जो नियोजक ने प्रस्तुत किया है उसमें भी 25.10.86 के बाद श्रमिक का सेवा में निरन्तर न होना।

अंकित किया गया है व यह टिप्पणी नहीं है कि श्रमिक ने स्वेच्छा से नौकरी पर आना बंद किया। अतः उपलब्ध तथ्यों के आधार पर यह निष्कर्ष किया जाता है कि दिनांक 25.10.86 के बाद श्रमिक की सेवायें नियोजक द्वारा समाप्त की गई थी। चूंकि श्रमिक ने सेवा मुक्ति की तिथि से एक वर्ष पहले की अवधि में 244 दिन काम किया था व सेवा मुक्ति से पूर्व धारा-25(एक) के प्रावधान की पालना नियोजक द्वारा नहीं की गई है इसलिए सेवा मुक्ति की यह कार्यवाही अनुचित एवं अवैध है।

9. नियोजक की प्रतिरक्षा यह है कि श्रमिक को सन् 1979 में नियोजित किया गया तब भी यह नियमित सेवा के लिए निर्धारित आयु सीमा पार कर चुकाया था क्योंकि उसकी जन्म तिथि 17.11.1937 है। नियोजक के गवाह श्री जौहरी ने शपथ पत्र प्रदर्श एम. 3 प्रलेख को साबित किया है जिसमें भी श्रमिक की जन्म तिथि 17.11.37 दर्ज की हुई है। श्रमिक की ओर से इस तथ्य बाबत कोई भी रजिस्ट्रार प्रस्तुत नहीं किया गया है। गवाह जौहरी से कोई जिरह नहीं की गई है तथा अपनी साक्ष्य में इस तथ्य का किसी भी रूप में खण्डन नहीं किया है इसलिए यह माना जाता है कि श्रमिक की जन्म तिथि 17.11.37 है व इस प्रकार दिनांक 17.11.79 को नियोजित होने समय उसकी उम्र करीब 42 वर्ष ही चुकी थी। निर्धारित आयु सीमा के पश्चात् नियमानुसार किसी भी व्यक्ति को केन्द्र सरकार में स्थाई नौकरी नहीं दी जा सकती किन्तु विविध परिस्थितियों में उसके नियमितकरण की कार्यवाही सम्भव है।

10. नियोजक के जवाब व गवाह जौहरी की साक्ष्य में यह बताया गया है कि समझौता कार्यवाही के समय श्रमिक को पुनः डाक्टरों की परीक्षा हेतु भेजा गया था तथा अधिकार अधिकारी ने श्रमिक को प्राथमिक रूप से सेवा के अयोग्य घोषित किया था, यह प्रमाण पत्र प्रदर्श एम. 2 है। इस संबंध में गवाह श्री जौहरी से कोई भी जिरह

नहीं है तथा श्रमिक ने नियोजन की ओर से की गई जिरह में यह बताया है कि वह मेडिकल परीक्षण हेतु उचित नहीं हुआ था व प्रदर्श एम. 2 पर उसका अंगूठा नहीं है। दोनों पक्षों की साक्ष्य व प्रदर्श एम. 2 प्रमाण पत्र को देखने हुए श्रमिक का कथन स्वीकार किये जाने योग्य नहीं है। वर्ष 1988 में प्राथमिक रूप से अयोग्य घोषित होने के बाद श्रमिक को नौकरी में स्थाई या नियमित करने का कोई भी आधार नियमानुसार नहीं हो सकता था। इसके अलावा गवाह श्री जौहरी ने अपने बयान में यह कहा है कि 8.2.88 को परीक्षण के पश्चात् श्रमिक कभी भी उनके कार्यालय में उपस्थित नहीं हुआ। इस तथ्य पर भी गवाह से कोई जिरह नहीं है इसलिए यह माना जाता है कि दिनांक 8.2.88 को श्रमिक को डाक्टर द्वारा सेवा के लिए अयोग्य घोषित किया गया था। तथा वह बाद में नियोजन के पास उपस्थित भी नहीं हुआ इन परिस्थितियों में सेवा मुक्ति की तिथि 25.10.86 से 8.2.88 तक बकाया वेतन के अलावा कोई भी अनुतोष श्रमिक की प्राप्ति करने का अधिकारी नहीं हो सकता। दिनांक 25.10.96 से श्रमिक की सेवा मुक्ति की कार्यवाही के तथ्यों को विधि स्थिति के अनुसार अर्थ माना गया है। अतः निर्दिष्ट विवाद का निर्धारण इस प्रकार किया जाता है कि—

पी.डब्ल्यू.आई., बांदीकुई द्वारा श्रमिक छिद्वा को सेवा मुक्ति करने की कार्यवाही अनुचित एवं अवैध है व श्रमिक 25.10.86 से दिनांक 8.2.88 तक की अवधि का बकाया वेतन नियमानुसार प्राप्त करने का अधिकारी है व इसके अलावा कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

11. उक्त आशय का पंचायत पारित किया जाता है, जिसे प्रकाशनार्थ अंतर्गत धारा-17(7) अधिनियम केन्द्र सरकार को भेजा जावे।

के. एल. व्याम, न्यायाधीश

नई दिल्ली, 20, नवम्बर 1996

का.आ. 3434—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक-नगर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद (2) के पंचायत को प्रकाशित करता है जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं.एल.—40012/202/94-1 आई आर (डीयू.)]

के.पी.टी. उण्णी, ईसा अधिकारी

New Delhi, the 20th November, 1996

S.O. 3434.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the

Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad (No. 2) as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Post Office, Suitha branch and their workman, which was received by the Central Government.

[No. L-40012/202/94-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 105 OF 1995

PARTIES :

Employers in relation to the management of Superintendent of Post Office and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D.K. Verma,
Advocate.

On behalf of the employers : Shri B. Joshi,
Advocate.

STATE : Bihar INDUSTRY : Post & Telegraph
Dated, Dhanbad, the 20th September, 1996

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-40012/202/94-I.R. (DU) stated, the 4th August, 1995.

SCHEDULE

"Whether the action of the management in erminating the service of Shri Adward Kumar for the post of E.D. Postmaster, Suitha branch post office is justified and legal? If not, to what relief the workman is entitled?"

In this case both the parties appeared through their respective lawyers and filed W.S. etc. Thereafter when the case was fixed for evidence, Mr. D. K. Varma, learned Advocate for the work-

man submits for passing an Award in this case in view of the decision reported in 1996-Lab I.C. 1059 Supreme Court without taking any evidence in the instant case.

3. In the premises it is pertinent of mention that it is a dispute in the service matter between the employee of Postal Department and the Post and Telecommunication department.

4. In the said case law Their Lordships were of opinion which is quoted below :—

"The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive principles of State policy enjoins on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity, and so it one essential part of the sovereign functions of the State as a welfare State. Postal and Telecommunication Department is not, therefore, an industry."

5. In view of such case law we cannot but hold that Postal and Telecommunication Department is not an "Industry" and thereby any question as regards service matter or of like nature cannot come within the jurisdiction of the Tribunal as the said dispute does not fall under the I.D. Act.

6. This position of law was also accepted by the learned Advocates of both the parties and thereby they submitted for passing as Award pursuant to the said judgement of the Hon'ble Supreme Court.

7. So in view of the said case this Tribunal has no jurisdiction to pass any Award in the matter of the reference made upon the question mentioned therein as the point in issue does not come within the ambit of I.D. Act and this Tribunal has no jurisdiction to pass any Award as prayed for. However, as indicated by Their Lordships of the Hon'ble Supreme Court the concerned person is at liberty to take legal recourse in appropriate forum.

8. Thus this reference is disposed off on the point of jurisdiction without going into the merits of the case.

This is my Award.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 20 नवम्बर, 1996

का.आ. 3435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक-तार, जयपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं.एल.-40012/44/89-डी2(बी)]

के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 20th November, 1996

S.O. 3435.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Asstt. Supdt. Post Office, Jaipur and their workman, which was received by the Central Government.

[No. L-40012/44/89-D2(B)]

K. V. B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं.सी. आई.टी. II/89

केन्द्र सरकार श्रम मंत्रालय की अधिसूचना संख्या :

एल.-40012/44/89-डी. 2(बी) दि. 23-10-89.

श्री ताराचन्द भगत, भवानी राम नोहराजी का मन्दिर, पुराना घाट, आगरा रोड, जयपुर।

बनाम

सहायक अधीक्षक, पोस्ट आफिस, जयपुर नगर(पूर्व)
मह. डिवीजन, जयपुर।

उपस्थिति

माननीय न्यायाधीश श्री के.एल. व्यास, आर.एच.जे.एस

श्रमिक पक्ष की ओर से: श्री एम. एफ. बैंग

नियोजक पक्ष की ओर से: श्री एम. रफीदक

दिनांक : 19-1-96

अवार्ड

केन्द्रीय सरकार ने निम्नलिखित विवाद इस न्यायाधिकरण की अधिनिर्णय हेतु अपनी अधिसूचना सं.एल. 40012/44/79-डी. 2(बी) दिनांक 23-10-89 के द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा-10(ख) के अन्तर्गत प्रेषित किया है —

2986 GI/96-9.

“Whether the action of the management of Asstt. Supdt., Post Office Jaipur is justified in terminating the services of Sh. Tara Chand from 7-2-88? If not, to what relief is the workman entitled?”

2. श्रमिक द्वारा प्रस्तुत स्टेटमेंट आफ क्लेम में जो तथ्य बताये गए हैं वे इस प्रकार हैं कि श्रमिक की नियुक्ति विपक्षी नियोजक द्वारा दिनांक 1-10-86 को ई०डी० के पद पर की गई थी उस पद पर उसने अप्रैल 1987 तक कार्य किया था, मई 1987 से श्रमिक को ग्रुप डी के पद पर नियुक्त किया गया व इस पद पर उसने दिनांक 6-4-88 तक कार्य किया। श्रमिक के कथनानुसार उसकी नियुक्ति रिक्त स्थान पर की गई थी व लगातार उसने 240 दिन से अधिक कार्य किया था। किन्तु इसके बावजूद सेवा मुक्ति से पूर्व नियोजक द्वारा धारा-25(एफ) व 25(जी) के प्रावधान की पालना नहीं की गई तथा श्रमिक की सेवा समाप्ति के पश्चात नई नियुक्ति भी की गई। अनुतोष यह मांगा गया है कि दिनांक 6-4-88 से श्रमिक की सेवा मुक्ति के आदेश को अवैध मानते हुए श्रमिक को पुनः सेवा में बहाल किया जावे व बीष की अवधि का वेतन दिलाया जावे।

3. नियोजक की ओर से प्रस्तुत जवाब में विधिक व प्रारम्भिक आपत्ति यह ली गई है कि डाक तार विभाग “उद्योग” की परिभाषा में नहीं आता है इस कारण विवाद पोषणीय नहीं है तथा भारत सरकार को पक्षकार नहीं बनाया गया है व श्रमिक की सेवायें विभागीय नियमों से नियंत्रित होती हैं इस कारण भी विवाद सुनवाई योग्य नहीं है। तथ्यों के संबंध में यह बताया गया है कि श्रमिक की नियुक्ति जब जब की गई उस समय संबंधित कर्मचारियों के अवकाश पर जाने से या अन्यत्र काम पर जाने से वह पद रिक्त हुआ था तथा इसी प्रकार उपलब्ध स्थान पर श्रमिक को पूर्ण रूप से अस्थायी नियुक्ति समय समय पर दी गई थी व संबंधित स्थाई कर्मचारियों को वापिस इयूटी पर आने पर श्रमिक की सेवायें समाप्त हो गई थी व इस कारण श्रमिक नियमित नियुक्त न होने के कारण कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है। प्रथम नियुक्ति ई.डी. के पद पर दिनांक 1-10-86 को होना स्वीकार किया गया है किन्तु यह बताया गया है कि इस पद पर श्रमिक ने दिनांक 28-2-87 तक कार्य किया था न कि अप्रैल 87 तक। इस के पश्चात् दिनांक 1-5-87 से 14-5-87, 1-1-87 से 6-6-87 7-6-87 से 31-10-87 व 1-12-87 से 9-2-88 तक विभिन्न कर्मचारियों के अवकाश पर होने के कारण श्रमिक का काम करना स्वीकार किया गया है तथा इस तथ्य को अस्वीकार किया गया है कि श्रमिक ने दिनांक 6-4-88 तक काम किया था। धारा 25(एफ) के प्रावधान की पालना नहीं करना व

उसको आवश्यकता न होना नियोजक ने जवाब में बताया है। यह भी स्वीकार किया है कि कोई वरिष्ठता सूचा उस समय जारी नहीं की गई थी। श्रमिक की नियुक्ति सेवा मुक्ति के पश्चात् किसी अन्य कर्मचारी को नियुक्त करना अस्वीकार किया है।

4. श्रमिक की ओर से मौखिक साक्ष्य में उसका स्वयं का शपथ पत्र तथा प्रदर्श डब्ल्यू. 1 से प्रदर्श डब्ल्यू. 2 प्रलेख प्रस्तुत किये गये हैं। नियोजक की ओर से एक गवाह भी श्री बनबारी लाल का शपथ पत्र व प्रदर्श एम. 1 से एम. 3 प्रलेख प्रस्तुत किये गये हैं, वहस दोनों पक्षों की सुनी गई।

5. दोनों पक्षों के अभिकथनों, उपलब्ध साक्ष्य से यह तथ्य साम्य है कि नियोजक द्वारा श्रमिक को प्रथम नियुक्ति दिनांक 1-10-86 को ई.डी. के पद पर दी गई थी। इसके आगे दोनों पक्षों में विवाद यह है कि श्रमिक को कुल कितने समय के लिए व किस रूप में नियुक्त किया गया था। इसी तथ्य पर विनिश्चित करने के लिए दोनों पक्षों की मौखिक व प्रलेखिय साक्ष्य पर विचार किया जाना आवश्यक है।

6. श्रमिक ने अपने क्लेम व शपथ पत्र में यह कहा है कि उसने दिनांक 6-4-88 तक नियोजक के यहाँ कार्य किया था। सेवा समाप्ति का कोई आदेश मान्य रूप से जारी किया हुआ नहीं है। शपथ पत्र के पद सं. 6 व 7 में श्रमिक ने यह उल्लेख किया है कि वास्तव में उसे सेवा से दिनांक 6-4-88 को हटाया गया था किंतु चार्ज उससे दिनांक 6-2-88 को ले लिया गया था व दिनांक 6-2-88 से 6-4-88 तक की अवधि का वेतन को उसे नहीं दिया गया। जिरह में उसने माना है कि इस अवधि का वेतन प्राप्त करने के लिए उसने कोई कार्यवाही नहीं की। दिनांक 6-2-88 से 6-4-88 के बीच श्रमिक ने विभाग में क्या काम किया यह स्पष्ट रूप से नहीं बताया गया है। प्रदर्श डब्ल्यू. 2 चार्ज रिपोर्ट स्वयं श्रमिक ने प्रस्तुत की, जिसके अनुसार दिनांक 6-2-88 को उसने चार्ज दे दिया था व इसके पश्चात् काम करने का कोई भी प्रलेख उसकी ओर से प्रस्तुत नहीं किया गया है। विवाद जो केन्द्र सरकार द्वारा निर्देशित किया गया है उसमें भी दिनांक 7-2-88 से सेवा मुक्ति की कार्यवाही की वैधता को तय करने का निर्देश है। इससे यह प्रगट होता है कि समझौता अधिकारी के समक्ष श्रमिक के इस दावे को स्वीकार नहीं किया गया था कि उसकी सेवायें दिनांक 7-4-88 से समाप्त की गई। यह व्याप्याधिकरण निर्देश की सीमा के बाहर कोई भी तथ्यात्मक विनिष्पत्ति करने के लिए वैधानिक रूप से सशक्त नहीं है। नियोजक के गवाह श्री बनबारी लाल ने मुँह बोलते हुए दिनांक 6-2-88 के पश्चात् श्रमिक द्वारा काम न करना बताया है। इस तथ्य पर उसकी कोई भी जिरह नहीं है। तथ्यात्मक स्थिति के विवेचन का निष्कर्ष यह है कि श्रमिक ने नियोजक के यहाँ दिनांक 6-2-88 के पश्चात् कोई कार्य नहीं किया था। अतः उसकी सेवायें दिनांक 7-4-88 से समाप्त होना नहीं माना जा सकता।

7. श्रमिक ने दिनांक 1-10-86 से दिनांक 6-2-88 के बीच किस रूप में व कितने समय कार्य किया इस बयान श्रमिक का कथन है कि उसने दिनांक 1-10-86 से अप्रैल 87 तक ई.डी. के पद पर व अप्रैल 87 से 6-2-88 तक वर्ग "डी" के पद पर कार्य किया था। प्रदर्श डब्ल्यू. 1 व प्रदर्श डब्ल्यू. 2 प्रलेख के अलावा कोई अन्य प्रलेख इस संबंध में श्रमिक ने प्रस्तुत नहीं किया है। प्रदर्श डब्ल्यू. 1 दिनांक 1-10-86 को हरि सिंह से ई.डी. का चार्ज लेने लाबत है, व दिनांक 6-2-88 की चार्ज रिपोर्ट प्रदर्श डब्ल्यू. 2 है। मान्य रूप से किसी प्रकार प्रक्रम पर कोई नियुक्ति आदेश श्रमिक को जारी नहीं किया गया। नियोजक की प्रतिरक्षा के संबंध में गवाह ने जिरह में यह भना किया है कि उसने दिनांक 1-5-87 से 14-5-87, 1-6-87 से 6-6-87, 7-6-87 से 31-10-87 व 1-12-87 से 6-2-88 के बीच कजोडमल, भगवान सहाय, मालती देवी स्थाई कर्मचारियों के अवकाश पर जाने के कारण काम किया था। उसने इस मुद्दा को भी सना किया है कि दिनांक 1-3-87 से 30-4-87 तथा 1-5-87 से 6-2-88 के बीच पूर्व उल्लेखित अवधि के अलावा उसने काम नहीं किया। व यह बताया है कि उसने निरन्तर दिनांक 1-10-86 से 6-2-88 तक स्थाई फिक्त पद पर कार्य किया था। इसके विपरीत नियोजक के गवाह बनबारी लाल ने अपने बयान में यह बताया है कि श्रमिक ने दिनांक 1-10-86 से 28-2-87 तक हरि सिंह को पोस्टमैन के पद पर कार्य करने के कारण ई.डी. के पद पर काम किया था व हरि सिंह के वापिस आने पर उसकी सेवा स्वतः समाप्त हो गई थी तथा दिनांक 1-3-87 से 30-4-87 तक उसने विभाग में काम नहीं किया। इसके पश्चात् दिनांक 1-5-87 से 14-5-87 तक कजोडमल, 1-6-87 से 6-6-87 तक भगवान सहाय, 7-6-87 से 31-10-87 तक मंगला राम व 1-10-87 से 6-2-88 तक मालती देवी के स्थान पर श्रमिक ने कार्य किया था क्योंकि वे कर्मचारी उस अवधि में अवकाश पर गये थे व इसके अलावा बीच की अवधि में श्रमिक ने कोई भी काम नहीं किया। गवाह ने प्रदर्श एम. 1 से एम. 3 प्रलेख वेतन भुगतान बाबत प्रस्तुत किये हैं जो दिनांक 1-10-86 से फरवरी, 88 की अवधि के हैं व उनमें हरिसिंह के नाम के नीचे वेतन प्राप्त करते वाले के रूप में श्रमिक का नाम लिखा हुआ है। गवाह का कथन है कि हरिसिंह के स्थान पर श्रमिक को नियुक्ति दी गई थी, इसी कारण वेतन भुगतान प्रलेख में यह इन्तर्ज किया हुआ है। इस संबंध में कोई भी जिरह सारवान का से गवाह से नहीं की गई है। जिरह में गवाह बनबारी लाल ने माना है कि नियुक्ति पत्र कभी भी श्रमिक को नहीं दिया गया था परन्तु यह स्पष्ट कहा है कि श्रमिक को एवजी में रखा गया था इसलिए स्थाई कर्मचारियों के वापिस आने पर उसकी सेवायें समय-समय पर स्वतः ही समाप्त हो गई थी। उपस्थिति रजिस्टर नियोजक के यहाँ रखा जाता है किन्तु गवाह बनबारी लाल ने जिरह में कहा है कि यह रजिस्टर

स्थापिकाकरण में प्रस्तुत नहीं किया गया। श्रमिक ने किसी भी प्रक्रम पर उपस्थिति रजिस्टर तलब करवाने का लिखित या मौखिक अनुरोध नहीं किया। अवकाश पर जाने वाले कर्मचारियों के स्थान पर अलग-प्रलग समय नियुक्ति देने का जो तथ्य नियोजक के गवाह ने बताया है उस पर कोई भी जिरह श्रमिक ने नहीं की है। ऐसी स्थिति में जो बयान गवाह ने उपलब्ध रिकार्ड के आधार पर दिया है उसे गलत मानने का कोई भी आधार नहीं हो सकता। गवाह बनवारी लाल ने शपथ पत्र के पद सं. 2 में यह कहा है कि श्रमिक की नियुक्ति पोस्टमैन के हुए रिक्त पद पर की गई थी व इस आधार पर श्रमिक प्रतिनिधि ने तर्क दिया है कि श्रमिक की नियुक्ति एग्जी या बड़ी के रूप में होना नहीं माना जा सकता। उक्त बयान से श्रमिक के तर्क का किसी प्रकार समर्थन नहीं होता है व इसके अलावा बयान के किसी भी भाग को अलग करके नहीं पढ़ा जा सकता। प्रदश डब्ल्यू. 1 चार्ज रिपोर्ट में भी यह उल्लेख है कि श्रमिक ने हरिसिंह से चार्ज लिया था। दोनों पक्षों की मौखिक व लेखित साक्ष्य को देखते हुए यह विनिश्चय किया जाता है कि श्रमिक ने दिनांक 1-10-86 से 28-2-87, 1-5-87 से 14-5-87, 1-6-87 से 6-6-87, 7-6-87 से 31-10-87, व 1-12-87 से 6-12-88 के बीच स्थाई कर्मचारियों के अवकाश पर होने के कारण रिक्त स्थान पर काम किया था तथा स्थाई कर्मचारियों के वापिस आने पर स्वतः ही श्रमिक की सेवायें समय-समय पर समाप्त हो गई थी, इस कारण श्रमिक को नियमित नियुक्त होना नहीं माना जा सकता व धारा-2 (ओ ओ) (बी बी) के प्रावधान के तहत इस प्रकार का सेवा मुक्ति छंटना की परिभाषा में नहीं आती है। तथ्यों से यह स्पष्ट है कि दिनांक 1-10-86 से 6-2-88 के बीच श्रमिक ने कुल 376 दिन समय-समय पर कार्य किया था इसलिए यदि श्रमिक की सेवा निरन्तर व नियमित मानी जावे तो उस स्थिति में नियोजक द्वारा धारा-25 (एफ) के प्रावधान की पालना करना आवश्यक है परन्तु इस प्रकरण में यह स्थिति श्रमिक के पक्ष में नहीं है। यह मान्य स्थिति है कि नियोजक द्वारा धारा-25 (एफ) के प्रावधान की पालना नहीं की गई है।

8. धारा-25 (जी) व 25 (एच) की पालना इस मामले में तथ्यों को देखते हुए नियोजक द्वारा करना आवश्यक नहीं था व इसके अलावा श्रमिक ने अपने अभिकथनों व साक्ष्य में दिखिष्ट रूप से यह नहीं बताया है कि उसकी कथित सेवा मुक्ति के समय उस प्रकार की धोनी में कौन कनिष्ठ कर्मचारी कार्यरत था तथा उस श्रेणी में श्रमिक की सेवा मुक्ति के बाद किसको नियोजित किया गया अतः धारा-25 (जी) और 25 (एच) की अवहेतना के संबंध में आवश्यक साक्ष्य श्रमिक द्वारा प्रस्तुत नहीं की गई है।

9. जो वैधानिक व प्रारम्भिक आपत्ति नियोजक द्वारा जवाब में ली गई हैं उन्हें बहस के समय प्रेरित नहीं किया गया है। औद्योगिक विवाद अधिनियम के प्रावधान से यह स्पष्ट है कि विवाद में उस अधिकारी को पक्षकार बनाना पर्याप्त

है जिसके द्वारा श्रमिक को नियुक्त किया गया है व इसके अलावा बंगलूर वाटर सप्लाई के मामले में माननीय सर्वोच्च न्यायालय ने "उद्योग" की जो परिभाषा प्रतिपादित की है उसे देखते हुए डाक तार विभाग की "उद्योग" की परिभाषा से बाहर नहीं माना जा सकता क्योंकि उस विभाग की कुल गतिविधियाँ सरकार की सार्वभौमिक गतिविधियों के अंतर्गत नहीं आती हैं। अतः नियोजक द्वारा ली गई वैधानिक आपत्ति को अस्वीकार किया जाता है।

10. निर्दिष्ट विवाद का अधिनियम इस प्रकार किया जाता है कि नियोजक सहायक अधीक्षक, डाकघर, जयपुर द्वारा श्रमिक ताराचन्द की सेवायें दिनांक 7-2-88 से समाप्त करने की कार्यवाही उचित एवं वैध है व परिणामस्वरूप श्रमिक कोई भी अनुरोध प्राप्त करने का अधिकारी नहीं है।

11. उक्त आय का अवाई पारित किया जाता है जिसे वारंटे प्रकाशनार्थ अंतर्गते धारा 17 (1) अधिनियम 1947 भेजा जावे।

के.एल. व्यास, न्यायाधीश

नई दिल्ली, 22 नवम्बर, 1996

का.आ. 3436 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार, आरमैट के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-96 को प्राप्त हुआ था।

[सं.एल-40012/179/93-आईआर(डीयू)]
के.बी.बी. उण्णी, डेस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Sub-divisional Officer, Telecom, Armour and their workman, which was received by the Central Government on 30-10-96.

[No. L-40012/179/93-IR(DU)]
K. V. B. UNNY, Desk Officer

**ANNEXURE
BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD**

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial
Tribunal-I.

Dated : 19th day of October, 1996
Industrial Dispute No. 40 of 1995

BETWEEN

Shri B. Pullaiah C/o B. Venkatachalamalah,
Nalgonda-508001. . . Petitioner

AND

- (1) The Telecom Distt. Engineer,
Telecom, Nizamabad-503050.
- (2) The Sub-Divisional Officer, Telecom,
Armour-503224. . . Respondents

APPEARANCES :

None for the Petitioner.

Sri P. Damodar Reddy, Advocate for the
Respondents.

AWARD

This is a reference made by the Govt. of India, Ministry of Labour, New Delhi by its Order No. L-40012/179/93/IR(DU) Dt. 17-1-1995 under Section 10(1)(d) & (2A) of Industrial Disputes Act, 1947 mentioned in its schedule which reads as follows :

“Whether the management of Sub-Divisional Officer, Telecom, Armour, Nizamabad is justified in terminating the service of Shri B. Pullaiah with effect from 1-1-88. If not what relief he is entitled to ?”

The said reference has been taken on file and notice was issued to both parties.

2. After receipt of the said notice, the respondents appeared and filed memo of appearance of Govt. Pleader. Several notices sent to the petitioner were returned by the Postal Authorities. Hence this Tribunal directed the Respondents on 17-7-95 to furnish correct address of the petitioner. Time was granted till 27-1-1996 to furnish the same. But the Respondent's counsel filed a memo on 27-1-1996 stating that the respondents are not

co-operating with him. Hence there is no option except to address a letter to the Government for furnishing the correct address of the petitioner. This Tribunal has issued a letter and reminders to the Government from 27-1-1996 to 19-10-1996.

3. On 19-10-1996 when the matter was called on, neither the Government which referred the dispute nor the respondents furnished the address of the petitioner. On a perusal of the docket sheet, neither the Government, nor the respondents nor the workman are taking any interest. Hence this matter is unnecessary on the file of this Tribunal as both are not taking any interest to prosecute it. This Industrial Dispute is closed.

Given under my hand and the seal of this Tribunal this the 19th day of October, 1996.

V. V. RAGHAVAN, Industrial Tribunal-I,

No oral or documentary evidence is adduced by both the parties.

नई दिल्ली 22 नवम्बर 1996

क.आ. 3437 औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.डी.ओ. दूरसंचार अनंतपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकरों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-90 को प्राप्त हुआ था।

[सं. एल-40012/54/95-आईआर(डीयू)]
के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3437.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SDO Telecom, Ananthapur and their workman, which was received by the Central Government on 30-10-96.

[No. L-40012/54/95-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial
Tribunal-I.

Dated : 26th day of October, 1996

Industrial Dispute No. 93 of 1996

BETWEEN

Shri K. Ramachandra S/o K. Pedanna Gutagulla (PO) Near Old Church Street, Khadiri Tq., Ananthapur District-515001. . . Petitioner

AND

The S.D.O. Telecom Hindupur, Ananthapur District-515001. . . Respondent

APPEARANCES :

Petitioner present in person

Sri P. Damodar Reddy, Advocate for the Respondent.

AWARD

This is a reference made by the Govt. of India, Ministry of Labour, New Delhi in its Order No. L-40012/54/95-IR(DU) Dt. 27-6-96 under Sections 10(1)(d) & (2A) of Industrial Disputes Act, 1947 for adjudication of Industrial Dispute mentioned in its schedule which reads as follows :

“Whether the action of the management of Sub-Divisional Officer Telecom Hindupur is justified in terminating the services of Shri K. Ramachandra ? If not, to what relief the workman is entitled to ?”

The said reference has been taken on file and notice was issued to both parties.

2. After receipt of the said notice, the petitioner was present in person and the Advocate filed Vakalat for the Respondent. Counter has been filed by the Respondent on 26-10-1996.

3. The Supreme Court held in Sub-Divisional Inspector of Post, Vaikam and others Cs. Theyyam Joseph etc. (1996-Labour Law Reporter Page 483) that Telecom Department is not an Industry. When once it is held that the Telecom Department is not an Industry, this Tribunal has no jurisdiction to entertain the dispute.

3. In the result, an Award is passed holding that the petitioner is not entitled to any relief.

Given under my hand and the seal of this Tribunal this the 26th day of October, 1996.

V. V. RAGHAVAN, Industrial Tribunal-I,

No oral or documentary evidence is adduced by both parties.

नई दिल्ली 22 नवम्बर, 1993

का.आ. 3438 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.डी.ओ., दूरसंचार धरमवर्गम के प्रबन्धन के संवेद नियोजको और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-96 को प्राप्त हुआ था।

[सं. एल-40012/43 95-आई आर (डीयू)]

के.वी.बी. उण्णी, डेस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3438.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of S.D.O. Phones, Dharmavaram and their workman, which was received by the Central Government on 30-10-96.

[No. L-40012/43/95-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial
Tribunal-I.

Dated : 25th day of October, 1996

Industrial Dispute No. 65 of 1996

BETWEEN

Sri M. Nagaraju D. No. 24/260 Rajaji Street,
Old Town, Ananthapur-515001.

. . . Petitioner

AND

नई दिल्ली, 22 नवम्बर, 1996

The S.D.O., Telecom, Dharmavaram-515 672
.. Respondent

APPEARANCES :

None for the Petitioner.
Sri P. Damodar Reddy, Advocate for the Respondent.

AWARD

This is a reference made by the Govt. of India Ministry of Labour, New Delhi by its Order No. L-40012/43/95-IR(DV) dt. 30-4/2-5-96 under Sections 10(1)(d) & (2A) of Industrial Disputes Act, 1947 for adjudication of Industrial Dispute mentioned in its schedule which reads as follows :

“Whether the action of the management of SDO, Telecom Dharmavaram is justified in terminating the services of Shri M. Nagaraju ? If not, to what relief the workman is entitled to ?”

The said reference has been taken on file and notice was issued to both parties.

2. Though notice served on the petitioner, he did not appear before this Tribunal nor he filed a representation on his behalf. The Respondent filed a petition IA No. 162/96 stating that the petitioner got relief from the Central Administrative Tribunal. The matter was posted from time to time for appearance of the petitioner. Ultimately IA No. 162/96 is allowed.

3. Recently the Supreme Court held in Sub-Divisional Inspector of Post, Vaikam and others Vs. Theyyam Joseph etc. (1996 Labour Law Report page 483) that Telecom Department is not an industry. So, this Tribunal has no jurisdiction to entertain the dispute.

4. In the result an award is passed holding that the dispute is not maintainable and hence I.D. is closed.

Given under my hand and the seal of this Tribunal this the 25th day of October, 1996.

V. V. RAGHAVAN, Industrial Tribunal-I,

No oral or documentary evidence is adduced by both the parties.

का.आ. 3439 — औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राजस्थान परमाणु विद्युत परियोजना, कोटा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं.एल.-42012/18/83-डी II (बी)]

के.बी.बी. उज्जनी, ईस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3439.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Rajasthan Atomic Power Project Rawat Bhata and their workman, which was received by the Central Government.

[No.L-42012/18/83-D-II(B)]

K.V.B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 86/1988

रेफरेंस : केन्द्र सरकार, अम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल. 42012/18/83/17-टीटी (13) डीयू बी वि., 21-1-84

राजस्थान अणुशक्ति कर्मचारी यूनियन, रावतभटा।

—प्रार्थी

बनाम

राजस्थान परमाणु विद्युत परियोजना को. अणुशक्ति जिला चित्तोड़गढ़ (वाया कोटा)

—प्रप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के.एल. व्यास, आर.एच.के.एस. प्रार्थी की ओर से श्री के.के. अग्रवाल प्रप्रार्थी की ओर से श्री मनीष भण्डारी दिनांक अर्वाड : 20-2-1996

अर्वाड

केन्द्र सरकार द्वारा निम्न विवाद अधिनियम हेतु निर्दिष्ट किया गया है :

“Whether the action of CPE Rajasthan Atomic Power Project, Rawat Bhata in imposing the penalty of stoppage of next 2-3 increments with cumulative effect of Shri A. K. Shrivastava T/man ‘B’ O&M Section RAPP, Rawat Bhata vide the management letter No. RAPP/64637/ Admn/9/547/E. 55-56 dated 29-5-81 is justified ? If not, to what relief the workman is entitled ?”

2. युनियन द्वारा प्रस्तुत क्लेम में यह अभिकथित किया गया है कि श्रमिक ए.के. श्रीवास्तव संबंधित युनियन के प्रथमी कार्यकर्ता हैं इसलिए प्रबन्धक पक्ष द्वारा उन्हें प्रस्तावित करने के लिए अनूचित रूप से तंग करने के लिए विभागीय जांच प्रारम्भ की गई थी तथा प्रार्थी के खिलाफ जो विभागीय जांच की गई थी वह पूर्ण रूप से नैसर्गिक न्याय के सिद्धांतों व नियमों के विपरीत थी व जांच अधिकारी द्वारा अपने प्रतिवेदन में आरोपों को सिद्ध नहीं मानने के बावजूद प्रबन्धक पक्ष द्वारा श्रमिक को आक्षेपित दण्डादेश में दण्डित किया गया। इन परिस्थितियों में यह अनुतोप क्लेम किया गया है कि श्रमिक के खिलाफ पारित 29-5-81 के दण्डादेश को उपास्त किया जावे।

3. प्रबन्धक पक्ष की ओर से प्रस्तुत जवाब में इन तथ्यों को धस्वीकार किया गया कि श्रमिक के खिलाफ विभागीय जांच किसी परोक्ष उद्देश्य में श्रमिक को परेशान करने के लिए प्रारंभ की गई। इसके अलावा यह अभिकथित किया गया कि समस्त विभागीय कार्यवाही श्रमिक के खिलाफ नियमानुसार व नैसर्गिक न्याय के सिद्धांतों के अनुरूप गई थी व जांच प्रतिवेदन से सहमत होते हुए अनुशासनिक अधिकारी द्वारा आक्षेपित दण्डादेश पारित किया गया था।

4. दोनों पक्षों के अभिकथन प्रस्तुत होने के पश्चात् 2-2-94 को नियोजक की ओर से जांच से संबंधित प्रलेख की फोटो प्रतियां न्यायाधिकरण के समक्ष प्रस्तुत की गई थी न जांच की औचित्यता के संबंध में वल्लभ के समय नियोजक की ओर से एक प्रार्थना पत्र दिनांक 22-1-96 को प्रस्तुत किया गया जिसके जरिए यह अनुरोध किया गया कि 2-2-94 को जो प्रलेख प्रस्तुत किये गए वे श्रमिक के मामले में सम्पादित किसी अन्य विभागीय जांच से संबंधित हैं इसलिए उनको विचार में नहीं लिया जावे व नियोजक को सर्वोच्च न्यायालय से संबंधित जांच का अभिलेख प्रस्तुत करने के लिए समय दिया जावे। यह प्रार्थना पत्र स्वीकार किया जाकर नियोजक को आवश्यक अभिलेख प्रस्तुत करने के लिए पुनः समय दिया गया। दिनांक 19-2-96 को नियोजक की ओर से यह प्रकट किया कि यह आक्षेपित दण्डादेश से संबंधित जांच का रिकार्ड पुराना होने से उपलब्ध नहीं हो सकता व इस कारण प्रस्तुत करने में असमर्थता है। वैकल्पिक तर्क यह भी दिया गया कि नियोजक को कुछ और समय और रिकार्ड तलाश करने के लिए दिया जावे। इस प्रार्थना का विरोध श्रमिक की ओर से इस आधार पर किया गया है कि यह प्रकरण 1988 से विचाराधीन है, आक्षेपित दण्डादेश 1981 में

पारित किया गया था व नियोजक को आवश्यकता से अधिक समय जांच अभिलेख प्रस्तुत करने के लिए दिया जा चुका है। दोनों पक्षों के तर्क व परिस्थितियों को देखते हुए नियोजक को जांच रिकार्ड पेश करने के लिए और समय दिया जाना उचित नहीं माना गया।

5. चूंकि नियोजक द्वारा आक्षेपित दण्डादेश से संबंधित जांच का अभिलेख प्रस्तुत नहीं किया गया है इसलिए यह मानने का आधार नहीं है कि श्रमिक के खिलाफ किसी आरोप के लिए कोई जांच की गई थी यदि किसी कारण तर्क के लिए यह भी माना जावे कि कोई जांच श्रमिक के खिलाफ की गई थी तब भी रिकार्ड के अभाव में यह मानने का कोई आधार नहीं है कि संबंधित जांच नियमानुसार व नैसर्गिक न्याय के सिद्धांतों के अनुरूप की गई थी। श्रमिक ने आने क्लेम में जांच की औचित्यता का निश्चित रूप से चुनौती दी है। नियोजक द्वारा प्रस्तुत जवाब में यह अनुरोध किया गया है कि यदि जांच को दृष्टिपूर्ण माना जाय तो उन्हें न्यायाधिकरण के समक्ष माध्य प्रस्तुत करने का अवसर दिया जावे। अलग से कोई प्रार्थना पत्र भी ऐसा प्रस्तुत नहीं किया गया है। इसके अलावा माननीय सर्वोच्च न्यायालय द्वारा एन.एल.के. 1972 (एस.सी. 1803, 1971 (1) एस.सी.सी. 472, ए.आई.आर. 1958 (एस.सी.) 130 व ए.आई.आर. 1965 (एस.सी.) 1803 में धारा 11(ए) अधिनियम व धारा 10 अधिनियम के संबंध में जो सिद्धांत प्रतिपादित किये गये हैं उनके आधार पर यह स्पष्ट है कि सेवा मुक्ति के अलावा अन्य मामलों में न्यायाधिकरण को दुरुवर्ण के संबंध में जांच करने के अधिकार उपलब्ध नहीं हैं। चूंकि श्रमिक के खिलाफ कोई भी जांच विधिवत किया जाना प्रमाणित नहीं है इसलिए आक्षेपित दण्डादेश को पुष्टि नहीं किया जा सकता।

6. निर्दिष्ट विवाद का अतिनिर्णय इस प्रकार किया जाता है कि श्रमिक ए.के. श्रीवास्तव के खिलाफ प्रबन्धक राजस्थान एंटीमिनिंग पावर प्रोजेक्ट रायबहाल द्वारा 29-5-81 के आदेश से तीन वार्षिक वेतन वृद्धियां संबंधी प्रभाव से रोकने का जो दण्डादेश पारित किया गया है वह अनूचित व अवैध है इसलिए उसे अवास्तविक किया जाता है वह परिणामतः श्रमिक को समस्त सुवर्गत लाभ प्राप्त करने का अधिकारी घोषित किया जाता है।

7. अर्बाई आज दिनांक 20-2-1996 को लिखाया जाकर मुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

नई दिल्ली, 22 नवम्बर, 1996

Mishra T/D, C&M Section of RAPS management is justified? If not, to what relief Shri K. C. Mishra is entitled?"

कां०आ० 3440 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राजस्थान परमाणु विजली घर, कोटा के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[सं० एल-43021/2/87-डी-III(बी)]

के०वी०वी० उष्णी, ईस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Rajasthan Atomic Power House and their workman, which was received by the Central Government. on

[No. L-43021/2/87-D-III(B)]

K.V.B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी०आई०टी० 53/1987

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-43021/2/87/डी-III(बी) दि० 8-7-87 राजस्थान अणुशक्ति कर्मचारी यूनियन, भीटू यूनियन कार्यालय, फेज-II गवतभाटा बाया कोटा।

—प्रार्थी

बनाम

मुख्य अधीक्षक, राजस्थान परमाणु विजली घर, अणुशक्ति बाया कोटा।

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के०एल० व्यास, आर०एच०जे० एस०

प्रार्थी की ओर से : श्री जे०के० अग्रवाल

अप्रार्थी की ओर से : श्री मनीष पण्डारी

दिनांक अवाई : 29-3-1996

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनियम हेतु निर्देशित किया गया है :

"Whether the action of the R.A.P.S. management in withholding an annual increment at the rate of Rs. 12/- per month w.e.f. 1-11-84 in case of Shri K. C.

2. श्रमिक यूनियन द्वारा प्रस्तुत क्लेम में यह बताया गया है कि श्रमिक के०सी० मिश्रा को अनुशासनिक कार्यवाही हेतु एक ज्ञापन 16-12-82 को दिया गया था जिसका समुचित जवाब उसने प्रस्तुत कर दिया था व उसके पश्चात उन्हीं तथ्यों पर पुनः 7-3-84 को एक मी मो सैन्ट्रल सिविल सर्विस (क्लासीफिकेशन कंट्रोल एंड अपील) नियम 1965 (जिसे तत्पश्चात नियम संशोधित किया जायेगा) के तहत श्रमिक को दिया गया जिसका उसने जवाब प्रस्तुत करते हुए यह अनुरोध किया था कि उसके खिलाफ आरोप यूनियन की गतिविधि के कारण गलत लगाया गया है, मामले की विस्तृत जांच कार्यवाही की जावे व श्रमिक को व्यक्तिगत सुनवाई का अवसर दिया जावे। इसके बावजूद श्रमिक के खिलाफ कोई जांच नहीं की गई, संबंधित प्रलेख उपलब्ध नहीं कराई गई व श्रमिक को अपना बचाव प्रस्तुत करने का अवसर नहीं दिया गया। आक्षेपित दण्डादेश के खिलाफ श्रमिक ने अपील प्रस्तुत की जो भी सरसरी तौर पर यस्वीकार की गई। इस प्रकार श्रमिक ने आक्षेपित दण्डादेश को नैसर्गिक न्याय के सिद्धान्तों के विपरीत होने के कारण चुनौती दी है।

3. नियोजक ने क्लेम के जवाब में यह स्वीकार किया है कि नियम 16 के तहत श्रमिक को 7-3-83 को मोमो जारी किया गया था, इसके अलावा इस घटना से संबंधित तथ्यों का उल्लेख करते हुए यह बताया गया है कि नियम 16 के तहत विधिवत जांच करना आवश्यक नहीं है तथा जो प्रलेख व परिस्थितियां अनुशासनिक अधिकारी के समक्ष उपलब्ध थी उन्हें देखते हुए श्रमिक को दुराचरण के लिए दोषी माना गया तथा उसे व्यक्तिगत सुनवाई का अवसर दिया जाना आवश्यक नहीं था। श्रमिक द्वारा इस जवाब का रोजोडण्डर भी प्रस्तुत किया गया है जिसमें यह बताया गया है कि उसे संबंधित दस्तावेज उपलब्ध नहीं कराये गये व न ही प्रतिरक्षा का अवसर दिया गया तथा जो आरोप मीमो में लगाया गया था उनमें से विजय गुप्ता से 900/- रुपये छीनने का आरोप स्वयं अनुशासनिक अधिकारी ने सिद्ध नहीं माना। जांच से संबंधित अभिलेख नियोजक की ओर से जवाब के साथ प्रस्तुत किया गया है।

4. मौखिक साक्ष्य में श्रमिक की ओर से श्री के०सी० मिश्रा व ए०के० श्रीवास्तव के शपथ पत्र प्रस्तुत किये गये हैं व नियोजक की ओर से एक गवाह श्री एम०ए० सलीम का शपथ पत्र प्रस्तुत किया गया। विधिक स्थिति को देखते हुए मौखिक साक्ष्य जांच व आरोप के गुण दोष के संबंध में लेखबद्ध करने की कोई भी आवश्यकता नहीं थी व मान्य विधिक प्रावधान के अनुसार ऐसे मामले में जांच अभिलेख के आधार पर सर्वप्रथम यह विनिश्चय किया जाना आवश्यक है कि श्रमिक के खिलाफ जांच उचित प्रक्रिया से की गई है या नहीं, अनुशासनिक अधिकारी द्वारा आरोप सिद्ध मानने का विनिश्चय उचित व वैध है या नहीं यदि दोनों विन्दु श्रमिक के खिलाफ तय होते हैं तो

निश्चित रूप से धारा 10 अधिनियम के तहत दण्डादेश में कमी या संशोधन करने का क्षेत्राधिकार इस न्यायाधिकरण को नहीं है।

5. श्रमिक के खिलाफ नियम 16 के तहत 7-3-83 को जो मीमो जारी किया गया था उसमें यह आरोप लगाया गया था कि उसने विजय गुप्ता व श्री डीडवानिया के साथ मास्पीट की व उन्हें धमकी दी थी तथा विजय गुप्ता से 900/- रुपये छीने। अपने जवाब में श्रमिक ने इन आरोपों को अस्वीकार किया है। उसका यह भी कथन है कि 18-12-82 को इन्हीं तथ्यों का एक मीमो उसे दिया गया था जिसमें श्री डीडवानिया को धमकी देने का उल्लेख नहीं था। नियोजक द्वारा 18-12-82 के मीमो के तथ्यों को अस्वीकार नहीं किया गया है व न ही उसकी प्रतिलिपि पत्रावली पर प्रस्तुत की गई है। यह भी स्पष्ट नहीं किया गया है कि उस मीमो में डीडवानिया से संबंधित घटना का उल्लेख क्यों नहीं था। श्रमिक ने अपने जवाब में इस घटना की विस्तृत जांच करवाने का व व्यक्तिगत सुनवाई का अनुरोध भी किया था व संबंधित प्रलेख उपलब्ध कराने का उल्लेख भी किया था। अनुशासनिक अधिकारी ने किसी भी अनुरोध को स्वीकार नहीं किया व 30-1-84 को आदेश पारित करते हुए श्रमिक को विजय गुप्ता से 900/- रुपये छीनने के आरोप में दोषी नहीं माना व बाकी आरोपों को प्रमाणित मानते हुए एक वार्षिक वेतन वृद्धि रोकने के दण्ड से श्रमिक को दण्डित किया गया। इस आदेश में यह उल्लेख स्पष्ट नहीं है कि अनुशासनिक अधिकारी द्वारा किन-किन प्रलेख के आधार पर व किस साक्ष्य के आधार पर आरोपों को प्रमाणित माना गया। यह भी उल्लेख नहीं है कि 900/- रुपये छीनने के आरोप का किन परिस्थितियों में प्रमाणित नहीं माना गया। जो शिकायत नियोजक के समक्ष घटना के संबंध में प्रस्तुत हुई थी उसकी प्रतिलिपि न तो श्रमिक को दी गई व न ही न्यायाधिकरण के समक्ष जांच रिकार्ड के साथ प्रस्तुत की गई है। ऐसी स्थिति में यह मानने का बंध आधार नहीं है कि अनुशासनिक अधिकारी द्वारा प्रभावी रूप से उपलब्ध अभिलेख पर विचार किया गया व उनके आधार पर आरोपों को प्रमाणित माना गया। न्यायाधिकरण किसी भी संबंधित प्रलेख के अभाव में यह विनिश्चय करने की स्थिति में नहीं है कि श्रमिक के खिलाफ क्या प्रलेख उपलब्ध थे व उनसे किस प्रकार आरोप सिद्ध होते हैं।

6. नियम 16(1)(बी) के अनुसार यदि अनुशासनिक अधिकारी आवश्यक समझे तो उस मामले में श्रमिक के खिलाफ दुराचरण के लिए नियमानुसार जांच करना आवश्यक बताया गया है। नियोजक के विद्वान प्रतिनिधि का कथन है कि नियम 16 के तहत किस मामले में जांच करना आवश्यक है यह विवेकाधिकार अनुशासनिक अधिकारी को उपलब्ध है व श्रमिक को प्रार्थना पर सम्पूर्ण जांच किया जाना आवश्यक नहीं है। उनके इस तर्क को स्वीकार नहीं किया जा सकता। कोई भी विधि दृष्टान्त इस संबंध में उनकी ओर से प्रस्तुत नहीं किया गया है। श्रमिक को लिखित

प्रार्थना के बावजूद न तो उसे व्यक्तिगत सुनवाई का अवसर दिया गया व न ही मामले की जांच करवाई गई। मीमो में वर्णित आरोप के अनुसार शिकायत कहीं दुसरे पक्ष ने की थी व श्रमिक की प्रतिरक्षा यह है कि नियोजक ने श्रमिक को यूनियन गतिविधि के कारण शिकायत गलत रूप से प्राप्त की थी। ऐसी स्थिति में श्रमिक को संबंधित गवाहान से जिरह करने का व अपनी साक्ष्य प्रस्तुत करने का अवसर दिया जाना आवश्यक था। अनुशासनिक अधिकारी ने ऐसी कोई टिप्पणी अंकित नहीं की है जिसमें यह उल्लेख किया गया हो कि जांच किया जाना किन परिस्थितियों में आवश्यक नहीं है। आरोप की प्रकृति व परिस्थितियों को देखते हुए इस प्रकरण में श्रमिक के खिलाफ नियमित जांच किया जाना नैसर्गिक न्याय के सिद्धान्तों के अनुरूप आवश्यक था। अपील अधिकारी ने अपने आदेश में यह माना है कि श्रमिक द्वारा अपने प्रतिवेदन में जांच करवाने का कोई भी अनुरोध नहीं किया गया जो तथ्यों भी श्रमिक के प्रतिवेदन को देखते हुए सही नहीं है। निष्कर्ष यह है कि श्रमिक को उन प्रलेख की प्रतिलिपियां उपलब्ध नहीं कराई गईं जिन पर आरोप आधारित थे, अपेक्षित होने के बावजूद विधिवत जांच श्रमिक के खिलाफ नहीं की गई, जिन प्रलेख व साक्ष्य पर अनुशासनिक अधिकारी ने आरोप को प्रमाणित माना उन्हें न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया गया है, आक्षेपित दण्डादेश में आरोप प्रमाणित मानने के लिए साक्ष्य का विवेचन नहीं किया गया है व न ही तर्कसंगत कारण दिये गये हैं इसलिए आक्षेपित दण्डादेश को उचित व वैध नहीं माना जा सकता।

7. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक के.सी. मिश्रा के खिलाफ नियोजक आर.ए.पी.एस. द्वारा 1-11-84 के आदेश में एक वेतन वृद्धि रोकने का जो दण्डादेश पारित किया गया है वह अनुचित व अवैध है इसलिए उसे अपास्त किया जाता है व श्रमिक को समस्त सुसंगत पारिणामिक लाभ प्राप्त करने का अधिकारी माना जाता है।

8. अवाई आज दिनांक 29-3-96 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के.एल. व्यास, न्यायाधीश

नई दिल्ली, 22 नवम्बर, 1996

का.भा. 3441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.डी.ओ., दूरसंचार धरमावरम के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच, प्रमुख में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-10-96 को प्राप्त हुआ था।

[सं. एल-40012/42/95- आई.आर. (डी. यू.)]

के.वी.बी. उप्पा, डैस्क अधिकारी

New Delhi, the 22nd November, 1996

S.O. 3441.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of S.D.O., Telecom and their workman, which was received by the Central Government on 30-10-96.

[No. L-40012/42/95-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I
AT HYDERABAD.

PRESENT :

Sri V.V. Raghavan, B.A., LL.B.,
Industrial Tribunal-I.

Dated : 23rd day of October, 1996.

Industrial Dispute No. 63 of 1996

BETWEEN

Sri S. Md. Dadahayath
S/o Ladzi Naik Sahed,
Sainagar IIIrd Bus Road,
Door No. 12/225,
Ananthapur-515 001. . . Petitioner

AND

The S.D.O., Telecom,
Dharmavaram-515 672. . . Respondent

APPEARANCES :

None for the Petitioner.

Sri P. Damodar Reddy, Advocate for the
Respondent.

AWARD

This is a reference made by the Govt. of India, Ministry of Labour, New Delhi by its Order No. L-40012/42/95-IR(DU) dated 30-4-1996 under Sections 10(1)(d) & (2A) of Industrial Disputes Act, 1947 for adjudication of Industrial Dispute mentioned in its schedule which reads as follows :—

“Whether the management of SDO, Telecom, Dharmavaram is justified in terminating the services of Shri S. Md. Dadahayath? If not, to what relief the workman is entitled to”.

The said reference has been taken on file and notice was issued to both parties.

2. Though notice served on the petitioner, neither he was present nor representation is made on his behalf. But the respondent appeared and filed Vakalat. On 7-8-1996 the respondent filed a petition stating that the petitioner already got relief from Central Administrative Tribunal. This matter was posted from time to time for appearance of the petitioner.

3. On 23-10-1996 the petitioner is absent. But parties did not file their pleadings. The Respondent filed IA No. 100/96 to reject the reference as the petitioner-workman got a relief from Central Administrative Tribunal. The respondent also filed IA No. 192/96 to decide that the reference is not maintainable as the Supreme Court held that Telecom Department is not an Industry. Both the petitions are allowed.

4. The Supreme Court held in Sub-Divisional Inspector of Post, Vaikam and others Vs. Theyyam Joseph etc. (1996 Labour Law Reporter Page 483) that Telecom Department is not an industry and when once it is held that the Telecom Department is not an industry, this Tribunal has no jurisdiction to entertain the dispute. Even otherwise also the petitioner got relief from the Central Administrative Tribunal as per Ex. R1.

5. In the result an Award is passed closing the I.D. as to the decision of Supreme Court as the Telecom Department is not an industry.

Gives under my hand and the seal of this Tribunal this the 23rd day of October, 1996.

V. V. RAGHAVAN,
Industrial Tribunal-I, Hyd.

Appendix of evidence

Witnesses examined on either side

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

Ex. R1 Order dated 16-2-96 in OA No. 224/96 of Central Administrative Tribunal, Hyderabad.

नई दिल्ली, 28 नवम्बर, 1996

New Delhi, the 28th November, 1996

का०आ० 3442 —केन्द्रीय सरकार का समाधान हो गया है कि लोकहित में ऐसा अपेक्षित है कि भारत प्रतिभूति मुद्रणालय जिसे औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची में प्रविष्टि 12 पर निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाना चाहिए,

अतः अधः औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारत प्रतिभूति मुद्रणालय, नासिक को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छ. माह की अवधि के लिए लोक उपयोगी सेवा घोषित करती है।

[[सं० एस-11017/3/91-आई०आर० (नी०विधि)]]

एच०सी० गुप्ता, अवर सचिव

S.O. 3442.—Whereas the Central Government is satisfied that the public interest requires that the India Security Press, which is covered by entry 12 in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared as a Public Utility Service for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of the Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares with immediate effect the India Security Press, Nasik to be a Public Utility Service for the purposes of the said Act, for a period of six months.

[No. S-11017/3/91-IR(PL)]

H. C. GUPTA, Under Secy.

